

THE INTERNATIONAL MANDATES

A historical, descriptive, and analytical study
of the theory and principles of the
Mandates System

BY

AARON M. MARGALITH

A DISSERTATION

Submitted to the Board of University Studies of the Johns
Hopkins University, in Conformity with the Requirements
for the Degree of Doctor of Philosophy

1929

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To My Father and Mother
with
Filial Devotion

PREFACE

The author first intended to write his dissertation on the subject of the Application of the Mandates System in the Near East. In this intended work the first chapter was to deal with the question: What is a Mandate? In the attempt to answer this question the author had to go into the history of the theory and principles of the Mandates System; he had to make a study of the complicated machinery of Mandatory Administration; and, finally, he had to subject the whole system to a legal analysis so as to make clear to himself the juristic status of a mandated territory in international law.

The answer to the question: What is a Mandate?, grew to such dimensions that the author thought it best to make it a study by itself. He has therefore treated the question of the international mandates from three points of view—historical, descriptive, and analytical—to each of which three chapters are devoted.

The first, second, and fourth chapters deal respectively with the historical background before the creation of the Mandates System, the making of Article 22 of the Covenant of the League of Nations, and the antecedents of the concepts and methods of the Mandates System in modern history.

The fifth chapter gives a general description of the interrelationship between the many factors in man-

datory administration, while the sixth and seventh discuss the terms of the mandates and their interpretation in the three classes of mandated territories.

The third chapter deals with the concepts and principles that underlie the Mandates System, and most of the eighth and ninth chapters are given over to a discussion of the situs of sovereignty in mandated territories.

The author wishes to thank Professor Westel W. Willoughby, head of the Department of Political Science at the Johns Hopkins University, and Dr. James Hart, of the same Department, for the kind suggestions and criticisms offered during the process of the work. For any errors in fact or judgment, however, the author himself is responsible. It is due Professor Willoughby to say that he is not in full agreement with the conclusions reached in Chapters VIII and IX.

A. M. M.

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CHAPTER I

THE DILEMMA

One of the fundamental causes, if not the chief cause, of international friction and wars has been the economic rivalry between the leading industrial nations of Europe.¹ This rivalry has expressed itself most prominently in the keen, competitive race after the acquisition and exploitation of colonies in the backward areas of Asia and Africa.

These colonies have been regarded primarily as preserves for raw materials, and, secondarily, as outlets for the manufactured products. For, in order to be and remain an industrial Power, and to be able fully to enjoy the many comforts and advantages which the development of modern sciences and technology so liberally offers, the industrial nations have become more and more dependent upon the rich resources of raw materials in the Asian and African continents. What, it may be asked, would become of the industrial Powers and their civilization if such products as rubber, cotton, hemp, sugar cane, drugs, tea, coffee, spices, minerals, and other necessary materials, which are exported in great abundance from the tropical countries, should suddenly cease?²

¹ There are a number of volumes written on the economic causes of war. *The Economic Causes of Modern War: 1878-1918*, by John Bakeless, contains a valuable bibliography.

² The dependence of modern industry upon the exploitation of the backward nations in the tropical countries is well brought out in a volume *The White Man's Dilemma*, by Nathaniel Peffer.

Although there have been other incentives to colonization besides the economic one, such as the missionary motive, desire for discovery, exploration and adventure, possession of strategic points for commerce and war, the economic factor, especially in modern times, has to be considered as having been the most potent one.

The race after colonies during the pre-war period became at times so acute that the prevalent fear that the inevitable World War was about to come, was again and again expressed. The Fashoda Crisis almost brought Great Britain and France into war. Here the race was over a million or so of square miles in the Sudan. The situation became so tense that the Chancellor of the Exchequer declared: "There are worse evils than war, and we shall not shrink from anything that may come."³ In face of such a threat, France had to yield. The famous telegram sent by the former German Kaiser to Paul Kruger during the Boer War, and the two Moroccan Affairs in 1905 and 1911, nearly precipitated then the world war which was later to come.⁴ But, although the urge for war was there, its actual consummation was postponed by the controlling fact that armaments and general war-preparations were not yet adequate for the task.

³ Parker Thomas Moon, *Imperialism and World Politics*, p. 153.

⁴ The best account of imperialistic expansion and its conflicts is given in a volume by Professor Moon, above cited. A similar book dealing with the East only, is that by Norman Dwight Harris, entitled *Europe and the East*.

Similar in many respects to the exploitation of colonies in Asia and Africa and the Pacific Islands, was the gradual assumption of control by the stronger Powers over their weaker contemporaries in Asia, Africa, and even Europe itself. Here the competition was no less sharp; in fact, it was more important, since strategical and political factors were added. Note, for example, the European war with China, and the Bagdad Railway dispute. Although the means by which such control was to be assumed were different from those used for the outright acquisition of colonies, the ultimate aim was the same in both cases: economic exploitation. It will be seen, therefore, that such a situation, where constant friction was inevitable, would be remedied when an appropriate occasion should arise, and that an effort would be made to harmonize the colonial ambitions of the respective Powers.

Another point of attack on the pre-war colonial policies has been, to express it mildly, the unfair treatment of the native tribes in their African possessions by some of the colonizing empires. The treatment of the Congo Negroes by King Leopold of Belgium is a striking example of how inhuman economic exploitation could become if left uncontrolled by international public opinion, and at least some sort of national responsibility.⁵ So, was also,

⁵ The Congo was for a long time the private possession of Leopold. His cruel treatment of the natives aroused public opinion to such an extent that the Belgian Government was forced to take it over in 1908. See *The Question of Aborigines in the Law and Practice of Nations*, by Alpheus Henry Snow.

Germany's harsh procedure in her colonies later given as the main reason for the severance of all colonial possessions from her.

Protests against colonial policies, with the rivalry in armaments that was a necessary companion to it, were already heard before the outbreak of the World War.⁶ But it was mainly during the war that earnest thinkers and honest diplomats endeavored to find ways and means by which to destroy these causes for war, and thus to help ensure permanent peace upon earth. At the same time the hope was expressed that the civilization of the backward nations would be taken into consideration—that henceforth the benefit of the native should be the sole guide in their government. J. A. Hobson,⁷ H. N. Brailsford,⁸ and C. F. Fayle,⁹ all of them writing during the war period, advocated radical reforms in colonial government.

It was characteristic of all war discussions of this problem that the proposed changes were to extend not only to those colonies formerly belonging to the Central Powers but also to colonial possessions of the Allied Powers. The solution, in order to be effective, was to extend to all colonies; otherwise, the end hoped for would be only partially attained. Thus, Fayle, writing in 1915, said:¹⁰ “ It is to the interest of the entire civilized world that as large a propor-

⁶ *The Great Illusion*, by Norman Angell, 1910.

⁷ *Towards International Government*, J. A. Hobson.

⁸ H. N. Brailsford: *The War of Steel and Gold*.

⁹ C. F. Fayle: *The General Settlement*.

¹⁰ *Ibid.*, p. 194.

tion of the earth's surface as possible should be opened up for commerce, that order should be maintained, that civilization of the inhabitants should be advanced, that the resources of the territory should be developed." A little further on he said: "It is obvious that no one nation can undertake to open up the whole undeveloped surface of the globe; and it is eminently desirable that some attempt should be made to secure agreements and cooperation in the carrying out of this work." The elements of trust and guardianship were already visible here. Fayle advocated freedom of trade and economic cooperation in the colonies of each Power.

A stronger advocate of international control was J. A. Hobson. On the assumption that "... the occupiers of a land containing rich resources which can be developed for the benefit of mankind have no 'right' to withhold them," he declared that "if they cannot, or do not desire to develop them themselves, they cannot properly resent the claim of outsiders to come in and do this work."¹¹ His remedy was international control of the administration of all colonies, and that an international council should negotiate the partition of all possessions with arrangements for periodic revisions.¹²

In an article, "The Open Door," contributed by Hobson in a book jointly written by C. K. Buxton, G. Lowes Dickinson, and others, he reiterated his

¹¹ J. A. Hobson, *Towards International Government*, p. 140.

¹² *Ibid.*, p. 141.

proposals in a still clearer fashion. He foresaw the establishment of the Permanent Mandates' Commission when he declared: ¹³ “. . . our method would be the establishment of a joint international protectorate, exercised by a commission appointed by the permanent international council”; again, “. . . another would be the delegation of this duty of protection by this international authority to the government of some single nation when propinquity or other special circumstances rendered this course available.” ¹⁴

The liberal writers, above quoted, were not alone in this attempt to solve colonial problems. At the Socialist Peace Conference that was held at Copenhagen in January, 1915, the plan to open all colonies to all Powers was discussed.¹⁵ At the British National Labor Conference, held in December, 1917, the British Labor's war aims were declared to be “The abandonment of every form of imperialism.” ¹⁶ With regard to certain provinces of the Turkish Empire, by which was meant Syria, Palestine and Mesopotamia, it was proposed “. . . that, conformably with the policy of no annexation, they

¹³ *Towards a Lasting Settlement*, C. R. Buxton, G. Lowes Dickinson and others, 1915, Article on “The Open Door,” J. A. Hobson, p. 106.

¹⁴ Strange enough there was no advocate missing who proposed retention by Germany of all her former colonies “. . . with certain conditions.” See William Harbutt Dawson, *Problems of the Peace*, pp. 229-230. But even he saw the need of a larger and more definite agreement for the open door.

¹⁵ William English Walling, *The Socialists and the War*, pp. 209-210.

¹⁶ *International Conciliation*, February, 1918.

should be placed for administration in the hands of a commission acting under the supernational authority of the League of Nations.”¹⁷ As to the colonies of tropical Africa, the British Labor Party disclaimed all sympathy with the imperialistic idea that they should form the booty of any nation, or should be exploited for the profit of the capitalist.¹⁸

In view of the fact that it was impracticable in the case of the African colonies to leave the various peoples concerned to settle their own destinies, it was suggested “. . . that the interests of humanity as a whole would be best served by the full and frank abandonment by all the belligerents of any dreams of an African Empire.” It proposed, therefore, that all tropical African colonies should be administered by a trained staff under the authority of the proposed League of Nations on the following principles: (1) Taking account of the wishes of each territory whenever it can be ascertained; (2) protection of natives against exploitation, and oppression, and preservation of their tribal interests; (3) all revenues raised are to be expended for the welfare and development of the African State itself; and (4) the permanent neutralization of this African State and its abstention from participation in international rivalries or any future wars.

Official sanction to the liberal solution of all colonial problems was given, respectively, by many lead-

¹⁷ Ibid., p. 50.

¹⁸ Ibid., p. 51.

ing statesmen of the Entente. In their case, however, with the exception of President Wilson, their declaration for a future liberal policy with regards to colonies was, as will be later shown, colored by immediate political and military considerations, for, in order to register support for the common cause of defeating the Central Powers, promises and pledges of various sorts were given to all claimants.

The most important spokesmen for the Allies were David Lloyd George, Prime Minister of England, and Woodrow Wilson, President of the United States of America. Through their utterances, such phrases as "no annexation," "self-determination," "consent of the governed," were brought into use in all corners of the world and inspired the hope that the war would be the last war.

At the Trades-Union Conference on Man Power, held on January 5, 1918, Lloyd George declared as follows: ¹⁹ "Arabia, Armenia, Mesopotamia, Syria, and Palestine in our judgment are entitled to a recognition of their separate national conditions." ²⁰ With regard to the German colonies in Africa, he said that the governing consideration in all these cases should be that the inhabitants should be under the control of an administration acceptable to themselves. He went so far even as to declare that the principle of self-determination is applicable even in

¹⁹ At the beginning of this speech known as Great Britain's War Aims' Speech, Lloyd George expressed his debt to the declared aims of Labor at their own conference.

²⁰ *International Conciliation*, February, 1918, p. 66.

the case of African tribes, because they are organized under chiefs and councils competent to speak for their tribes.

America's terms of settlement with respect to colonies was Point Five in the famous Fourteen Points Speech by President Wilson before a joint session of Congress on January 8, 1918. Point Five reads as follows:²¹ "Free, open-minded and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the population concerned must have equal weight with the equitable claims of the government whose title is to be determined."²²

From the foregoing it will be seen that not only were liberal writers ripe for the idea that some reform was essential in colonial policy, but that general public opinion was aroused to such a point as to force responsible organizations, such as the British Labor Party as well as the leading allied spokesmen, to declare themselves categorically on this question. When peace had finally come, all eyes, especially those of the small nations and oppressed peoples, were turned to the forthcoming Peace Conference

²¹ Ibid., p. 82.

²² A separate point, Point 12, was given over to the consideration of territorial solution of the Turkish Empire. It reads: "The Turkish portions of the present Ottoman Empire should be assured a secured sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development."

whence salvation would emanate and the millennium appear to a tired but hopeful world.

It is now the time to consider the other side of the picture, which, although it may not harmonize well with the first, is yet necessary to a full understanding of what was about to happen at the Peace Conference, and which will explain the eventual creation of the Mandates System with its positive and negative sides.

This opens up for consideration the secret treaties and agreements entered into during the war between the Allies themselves or with some outside party. In this discussion only such treaties, agreements and promises which affected directly or indirectly the future settlement of the colonies later to become mandated territories will be considered.²³ The division of Turkey was first discussed between Russia, France, and Great Britain. Italy joined after she decided, in 1915, to enter the war on the side of the Allies.²⁴

²³ The existence of these agreements, although it had been suspected for a long time, first became known to the general public when they were published by the Revolutionary Bolshevik Government in Russia in their official paper, *Isvestiya*, on November 17, 1917. Their publication by various liberal newspapers in England caused much excitement among the opposition forces of the Allied Governments, and, at least in part, must have influenced Lloyd George to come out with his famous War Aims' Speech. The full text of these treaties can be found in a little book *Les documents secrets publiés par les Bolsheviki*, by Emil Haloy.

²⁴ A general discussion of the secret treaties is found in Ray Stannard Baker's *Woodrow Wilson and World Settlement* (3 vols.) Vol. I, 48-62. See also H. W. V. Temperley (editor), *History of the Peace Conference* (6 vols.)

The most important of these treaties was the Secret Treaty of London, signed April 26, 1915,²⁵ where Italy was awarded a slice of Turkey.²⁶ Another important agreement was the famous Sykes-Picot agreement of May 10, 1916, between France, Great Britain, and Russia relating to the settlements of certain portions of Turkey—those that are inhabited mainly by Arabs.²⁷ Zones of all colors were laid out, either for simple annexation, or for spheres of influence for the respective signatories.

The St. Jean de Maurienne Agreement of April 17, 1917, further delimited Italian claims in Asia Minor. The parties to this agreement were Italy, France, and Great Britain. Russia did not ratify it.²⁸ In addition to the above, must be mentioned the secret arrangement between Hussein, Sherif of Mecca, and Sir H. McMahon, at that time British High-Commissioner in Egypt, described both in the House of Lords and the House of Commons as being of an inconclusive nature,²⁹ and the open Balfour Declaration favoring the establishment of a national home for the Jews in Palestine.

²⁵ Text to be found in *British State Papers*, CXII, 973 ff.

²⁶ Earlier agreements, of course, left Italy out of a share in the coveted spoils. This treaty was later modified partly owing to a change in military circumstances occasioned by the revolt of Mustapha Kemal and the resulting non-ratification of the Sèvres Treaty, as well as to general principles which curtailed Italy's claims in Europe and Anatolia. (See Temperley, IV, 429-443.)

²⁷ Text in J. deV Loder: *The Truth about Mesopotamia, Syria, and Palestine*, App. 1.

²⁸ For the discussion of all secret agreements concerning the Near East, see Temperley, VI, 1-22.

²⁹ Baker, above cited, I, 48.

The existence of a secret treaty between Great Britain and Japan with regard to the division of certain German colonies in West Africa was incidentally disclosed during the discussion at the Peace Conference. At that time the secret agreement, or, as the Japanese called it, "exchange of ideas," between Japan and the other allies, with regard to the eventual possession by Japan of Shantung, as well as all the German Islands north of the equator, came to light.³⁰

It will appear that, not only were the various secret treaties and agreements contrary to public official announcements by responsible Allied spokesmen, but were contradictory as between one another. So that, when the Peace Conference came, the allied plenipotentiaries came there, on the one hand, armed with inconsistent secret agreements, on the other hand, morally bound to act according to their idealistic avowals and specific promises to various peoples and races. But the settlement of this seemingly insoluble problem was not as difficult as might have been supposed. With the exception of minorities in the respective countries of the Entente, the majority of the public had turned reactionary; there was a distinct swing to the right. The observer could not fail to see a psychological transformation, the character of which was not hard to discover. The psychology of the hard-pressed warrior facing a strong, determined enemy, had yielded

³⁰ *Ibid.*, p. 60.

to that of a conqueror with the enemy's spoils before him easily to be had by a mere stretching out of the hand. The work of the politician was thus made much easier, and his conscience less bothersome. Declarations and promises were forgotten, and the attempt was made to settle the old, as well as the newly created, problems by an application of the old theories of revenge and compensation.

Now that the war had ended, the burden of a painful suspense had gone and its horror was not so strongly felt, the victors demanded the complete crushing of the defeated enemy, and full rights to as much of the spoils as could be obtained. What the people at that time thought was not of the League of Nations, or of the rights of the oppressed peoples and nationalities, but should the Kaiser be hung. There was a great slump in idealism, and, in an atmosphere like this, nothing great, idealistic, no general acts of altruism and sacrifice for international good will, were to be looked for. It seemed that all those who based their demands on justice alone were to be given mere lip-service in the form of some kind of humanitarian resolution, as was the custom of the international conferences of the pre-war period. Clemenceau, the Premier of France, and the most reactionary of all allied statesmen, was most clear about what he expected of the Peace Conference. In the preliminary French Plan of Procedure for the Peace Conference ³¹ Clemenceau said: " It

³¹ Baker, III, Doc. 7.

may be remarked that a certain number of questions that are raised have to be settled directly amongst the great Powers themselves without calling upon any committee to discuss them; that also applies to colonial affairs, which essentially concern England and France.”³² Later on, he added that, after all the material questions of the four principal nations were settled “the Congress finally could place itself, as sometimes has been done in the past, under the invocation of some of the principles leading to justice, morals and liberty.”³³

By this he meant some kind of resolution favoring the creation of the League or expressing some idealistic sentiments to satisfy the internationalists, as well as cover up and partly condone the other acts of the Conference. The other leaders of the Entente were not so outspoken, but agreed with him in principle.³⁴ The period between the Armistice, November 11, 1918, and the opening of the Peace Conference, January 12, 1919, was filled with diplomatic bargaining carried on in the old style between the European Nations, with regard to the procedure and the program of the Conference.

The hope that this would be a new kind of peace, “an open covenant, openly arrived at, after which there shall be no private international understanding of any kind but diplomacy shall proceed always

³² Ibid., p. 62.

³³ Ibid., p. 63.

³⁴ Baker, I, ch. v, “The Slump in Idealism.” See also George Creel: *The War, The World and Wilson*.

frankly and in the public eye ”; ³⁵ the hope that the conference would be guided by the often-declared principles of “ non-annexation,” “ self-determination,” and “ consent of the governed ” would thus have been totally shattered were it not for the one man whom victory did not blind, and who came to the Conference with the plan to put into realization all those ideals and wishes of which he was the greatest exponent. This man was Wilson, President of the United States of America, and head of the American delegation to the Versailles Peace Conference. He came to the conference with no territorial ambitions, and with no secret agreements of an imperialistic nature. He was the hope of the liberals and the fear of the imperialists.

There then ensued a fierce battle between the master minds of Europe, Lloyd George and Clemenceau, ably assisted by Signor Orlando and Baron Sonnino of Italy, all representing the old diplomacy, and President Wilson, representing the new diplomacy. Whenever a question was brought up for discussion before the Supreme Council it was to be expected that two opinions would be formed setting out from two points diametrically opposing one another.

When the question of the disposition of the late enemy’s colonies in Africa came before the Supreme Council ³⁶ two camps were at once formed. In spite of the pre-arranged procedure according to which

³⁵ Point 1 of Wilson’s Fourteen Points.

³⁶ The discussion started January 23rd, 1919.

the establishment of the League was the first one on the program, to be followed much later by the territorial questions, the discussion of the colonies' future was precipitated by Lloyd George, and, with the exception of Wilson, immediately agreed upon by the other members of the Supreme Council. Baker says that the discussion was brought suddenly upon Wilson so as to bring him to a test. His opponents did not know the President, and wanted to see how strongly he could fight for his convictions. The belief that, if the African colonies would be parcelled out, as was now demanded, a favorable precedent would be established which could be applied when the more valuable Near Eastern provinces of the Ottoman Empire came up for consideration, must have also played a share in this supreme attack.³⁷ Contrary to what he had declared before the Trades-Union Conference on January 5, 1918,³⁸ Lloyd George now said that he would like the conference to treat the African territories as part of the Dominions which had captured them.³⁹ Another reason for this early discussion may have been the desire to divide the colonies before the League of Nations was created. The League could not hope to change an accomplished fact.

The President proved equal to the situation; he objected to immediate discussion of the colonies, for, in his opinion, the disposition of the colonies was

³⁷ Baker, I, 253.

³⁸ See above.

³⁹ Baker, I, ch. xv, "War spoils at Paris," p. 257.

secondary in importance to World Peace, and could wait until after the formation of the League. In the middle of this discussion, as if by careful pre-arrangement, the door of the meeting hall opened and the Prime Ministers of all the British Dominions entered and demanded of the Council to grant them outright annexation of all the territories they had seized from the enemy in Africa as well as all the enemy's insular possessions. Their dramatic appearance and their insistent demands convinced Wilson that he was facing a decisive struggle. The question could no longer be postponed. It was now incumbent upon the Conference to decide whether the colonies were to be given over to their conquerors by annexation, pure and simple, or whether they were to be governed according to the ideals of the President. Which way was the decision to go?

CHAPTER II

THE MAKING AND AUTHORSHIP OF ARTICLE 22 OF THE COVENANT

The question of the mandates is organically related to the League of Nations. The provisions for the government of all mandated territories form Article 22 of the Covenant of the League, and the function of the Mandates Commission is one of the principal functions of the League as a whole. It is therefore necessary to give a brief account of the making of the Covenant of the League of Nations and of the incorporation of the mandatory provision in it.

It was a foregone conclusion that one of the main results of the World War would be the creation of some form of international organization with permanently working machinery ready to meet and act at the call of any emergency. The experience during the few hectic days preceding the outbreak of the World War, in July, 1914, of diplomats like Sir Edward Grey, who tried through some form of international arbitration, to prevent such a calamity from spreading, and his failure, was in itself enough to make the creation of such a body imperative. In the minds of many was the belief that the war could have been averted, if a council representing the world public opinion had been ready for action.

The preservation of peace was certainly of great importance, but not the only factor that prompted the formation of the League of Nations. The case of Belgium, whose neutrality had been brutally violated in spite of its being guaranteed by France, England and Germany herself, had taught the lesson that the mere guaranty of some nations was not, in itself, strong enough to secure small nations against attack by stronger neighbors. These small nations needed further and stronger international guaranties of their national sovereignty in order that the international obligation should not again be a mere "scrap of paper."

Still another incentive to the creation of the League was the steadily growing importance, nay, indispensability, of international cooperation in many fields. The benefits to be drawn from such international cooperation was sufficiently proved even before the war by the international organizations which had been formed to regulate certain economic and humanitarian activities.¹

But, it was only during the War that international cooperation was practiced on a grand scale, and its blessings had thus a chance to prove themselves in many and various enterprises. The Supreme War Council of the Allies, the various Inter-Allied Councils and Commissions for Food, Munitions, Purchases and Transportation proved in their workings

¹ As, for example, the International Postal Union and the Danube River Commission.

the practicability of international cooperation. And it was to be expected that, in the after-war period, not only would such cooperation among nations be necessary and beneficial to themselves but indispensable to World Peace.²

Public announcements and discussions favored the formation of a society of nations. Its establishment formed a part in nearly all declarations of policy of the belligerent countries. The public, in general, looked upon an eventual league as a panacea for all evils, past and present. But it was only in the latter part of the war that a constitution for a League of Nations was drafted. It was only then that there appeared variations of opinions and expectations with respect to a League.³ The first draft was drawn up by a committee, headed by Lord Philmore, on the request of the British Foreign Office. This committee made a report on March 29, 1918, known as the Philmore Report, which became the foundation of the League of Nations' Covenant.⁴ There were numer-

² A discussion of the influence of this factor upon the Covenant will be found in an article by Dwight W. Morrow, "The Relation to the Covenant of Recent International Cooperation," in the *Annals of the Academy of Political Science*, XIII, 359-373; also see, by the same author, *The Society of Nations*, 1919.

³ The best recent and thorough study of the making of the Covenant is *The Drafting of the Covenant*, by David Hunter Miller (2 vols.). Mr. Miller's book contains all the documents that were proposed or used in the drafting of the Covenant as well as the minutes of the sessions of the Commission on the League of Nations created by the Peace Conference to draft the Covenant. See especially the minutes of the sixth meeting of the Commission held on February 8, 1919. I, ch. xvi.

⁴ The Philmore Report is given in Baker, III, Doc. 8.

ous other schemes for a League drawn up by French, German, Dutch, Scandinavian, Swiss, and Italian governments, as well as by private organizations in the United States and Great Britain. But, as will be later shown, the main work on the Covenant was done by Anglo-Saxons, and the other plans had practically no effect on it.⁵

The Philmore Report reached the United States in May, 1918. Later came the House draft, made by Col. Edward M. House on demand of President Wilson. This plan differed from the Philmore Plan on which it was based, in that it went into greater details. Based on these two plans, Wilson framed his own plan, known as Wilson's First Draft. It was this draft which he took with him to Paris. Arriving there, however, he wrote a new plan known as Wilson's Second Draft.⁶ The reason that prompted Wilson to rewrite his plan was because, on arriving in Europe he was handed the famous "Smuts' Proposals," which greatly influenced him. It is necessary, then, to turn our attention to the plan of General Jan Smuts, member of the British War Cabinet.

General Smuts was the first Allied Statesman who connected the territorial settlements resulting from

⁵ For the various plans see Temperley, III, 51-98, and VI, 426-462. Also Baker, I, ch. xiii, and III, 66-197. The German Report is from the point of view of this study more important than the other schemes drawn up by non-Anglo-Saxons, and will therefore be given special consideration later in this chapter.

⁶ Wilson's first and second drafts are given in Baker, III, as Docs. 10 and 11, respectively.

war with the League of Nations. Next to Wilson, Smuts was looked upon as the greatest idealist which the war had created. Smuts' proposals were superior to all other plans that had appeared before his in that he was specific and clear where all others were vague.⁷ It is, therefore, not surprising that the direct parentage of Article 22 of the Covenant of the League of Nations, which concerns itself with the mandated territories and their administration, is credited to General Smuts.⁸ No other official plan for a League of Nations, prior to that of Smuts even mentioned the colonial question.⁹ General Smuts

⁷ Smuts' plan was published in Europe on December 16, 1918, under the name of *The League of Nations: A Practical Suggestion*. The full text of these proposals is given as a special supplement to the *Nation*, February 8, 1919. It is also found in Miller, above cited, in Vol. II, Doc. 5, pp. 22-60. A summary of the plan is given in Baker, III, as Doc. 11, pp. 94-100 and in John Eugene Harley's *The League of Nations and the New International Law*, App. 1.

⁸ General Smuts' plan was not at all original with him. Not only did he draw liberally from many and various sources, as will be proven in chs. iii and iv of this study, but it seems that, even in the actual writing of the plan, he was greatly helped by members of the Round Table, especially by Mr. Phillip Kerr, at that time secretary to Prime-Minister Lloyd George. See an article in the *American Political Science Review*, November, 1922, "Origin of Mandates" by Prof. Pitman B. Potter. Of course, this in no way detracts from the value of his plan and its opportuneness.

⁹ According to David Hunter Miller, legal adviser to Wilson during the Peace Conference, most of Smuts' proposals with regards to the colonies were already ripe in Wilson's mind and Wilson took from Smuts nothing but his phraseology. See an article in *Foreign Affairs*. "The Origin of the Mandate System," January, 1928, p. 281. See also Miller, above cited, I, 40-43. Baker, who more than anybody else had access to all of Wilson's papers, is of the contrary opinion, and gives all credit for the mandatory principle to Smuts. See Baker, I, 265, 424.

wanted to give to the League many powers during the peace time, so that its main aim, the preservation of peace, would be made easier. The wording of the plan is so short and concise that we can best give his ideas by quoting him, in part.

On the assumption that "Europe is being liquidated and the League of Nations must be made the heir of this great estate" [of the territories whose fortune is to be settled], he proposed: ¹⁰

(1) That the vast multiplicity of territorial, economic, and other problems with which the Conference will find itself confronted, it should look upon the setting up of the League of Nations as its primary and basic task, and as supplying the necessary organs by means of which most of the problems can find their only stable solution.

(2) That so far at any rate as the people and territories formerly belonging to Russia, Austria-Hungary, and Turkey are concerned the League of Nations should be considered as the reversionary in the most general sense and as clothed with the right to ultimate disposal in accordance with certain fundamental principles.¹¹

(3) These principles are: first, that there shall be no annexations of any of these territories to any of the victorious powers, and, secondly, that in the future government of these territories and people the rule of self-determination or the consent of the governed to their form of government shall be fairly and reasonably applied.

(4) That any authority, control or administration which may be necessary in respect of these territories and peoples, other than their own self-determined autonomy, shall be the

¹⁰ Only the first seven points of Smuts' plan concern themselves with territorial questions.

¹¹ As will be shown later in this chapter, Smuts did not intend to have the German colonies governed under the mandatory principle.

exclusive function of, and shall be vested in the League of Nations and exercised by or on behalf of it.

(5) That it shall be lawful for the League of Nations to delegate its authority, control or administration in respect of any people or territory to some other state whom it may appoint as its agent or mandatory, but whenever possible the agent or mandatory so appointed shall be nominated or approved by the autonomous people or territory.

(6) That the degree of authority, control or administration exercised by the mandatory shall in each case be laid down by the League in a special act or charter which shall reserve to it the complete power to ultimate control or supervision, as well as the right of appeal to it from the territory or people affected against any gross breach of the mandate by the mandatory state.

(7) That the mandatory state shall in each case be bound to maintain the policy of the open door or equal economic opportunity for all, and shall form no military forces beyond the standard laid down by the League for the purposes of internal control.

It was these clear provisions for the territorial settlement that influenced Wilson to rewrite his original plan. The mandatory provisions appear in the second draft of Wilson in the Special Supplementary Agreements appended to the original plan.¹² But, while Wilson practically transferred Smuts' ideas, and even style, into his own plan, he also added a new provision that was not only not found in Smuts' script but was even against its spirit.¹³

¹² President Wilson uses the phrase "residuary trustee" in preference to "reversionary," used by Smuts.

¹³ Among other things Wilson took from Smuts also the bicameral system for the League. But a discussion of this is beyond the scope of this study.

Smuts concerned himself solely with territories formerly belonging to Russia, Austria-Hungary and Turkey. With regard to German Colonies in the Pacific Ocean and Africa he expressed himself as follows: "That they are inhabited by barbarians, who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any idea of self-determination in the European sense."¹⁴ Wilson took the same principles of mandatories and applied them to the German Colonies. Owing to criticism offered by General Bliss and David Hunter Miller, Wilson wrote a third draft. At the same time, the British had perfected a plan of their own, which, in many points, disagreed with that of Wilson. It was therefore decided to straighten out these difficulties before a plan should be put before the Commission on the League of Nations. This was done by the respective legal advisers to the American and British delegations, David Hunter Miller and Cecil J. B. Hirst, and thus came to be named the Hirst-Miller draft. This draft became the basis for discussion by the Commission.¹⁵

Article 22, which deals with the mandates, however, was not written by the Commission on the League of Nations. Its language is practically the same as the Smuts' Resolution of January 30, 1919, and adopted by the Council as the principles by which

¹⁴ The *Nation*, above cited, p. 227, column 1.

¹⁵ For a full discussion of this draft see S. Doc. 149, 66th Cong., 1st sess.

the German possessions and the Turkish Near Eastern Provinces were supposed to be governed.¹⁶ This resolution the Council finally adopted as a compromise between the imperialistic desires of certain of the dominions of the British Empire and Wilson's insistence on the mandatory principle. It was written by General Smuts in collaboration with Mr. Philip Kerr, editor of the Round Table. The vagueness of the phraseology sufficiently proves that it did not have the privilege of passing through the hands of legal experts. It is more like an enabling act with general, binding directives than a specific charter of government.¹⁷

More than any other part of the Covenant this article evidences its Anglo-Saxon origin. It declares in a certain way the principles by which the specific territories should be governed, leaving great latitude for future changes and developments. For a clearer understanding of the mandates system, its provisions and its workings, one has to look to the provisions of the mandate of each territory, and to the decisions passed by the Council of the League in respect to their government.

According to Article 22, the administration of former enemy territories which "as a consequence

¹⁶ The British Delegation finally agreed upon the text of the resolution only after a heated and violent debate. See Miller, above cited, I, 105.

¹⁷ See Miller, I, 373. See also Henry Rolin "Le system des Mandats Coloniaux," *Revue de Droit International et de législation comparée*, 1920, p. 332.

of the late war have ceased to be under the sovereignty of the states which formerly governed them," namely, certain Provinces of the former Turkish Empire in the Near East, German Possessions in Africa and in the Pacific, which "are inhabited by people not yet able to stand by themselves under the strenuous conditions of the modern world, is intrusted to mandatory Powers which by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and who are willing to accept it."¹⁸

The administration is to be exercised by advanced nations on behalf of the League of Nations on the fundamental principle "that the well-being and development of such peoples form a sacred trust of civilization." And because the countries, their inhabitants, and their status in civilization differ greatly, Article 22 provides for three distinct types of mandates, according, respectively, to the stages of the development of the peoples, the geographical situation of the territories, their economic conditions and other qualifying circumstances.

There are, therefore, the A mandated territories, which include "certain communities formerly belonging to the Turkish Empire and which have reached a stage of development where their existence as in-

¹⁸ This last provision was inserted by President Wilson after he had been approached by a number of senators who were friendly to the Versailles Treaty, and who feared that the United States, in case of ratification, should be forced to accept the mandate offered them against its will. See Baker, III, Doc. 19.

dependent nations can be provisionally recognized, subject to the rendering of administrative advice and assistance by the Mandatory until such time as they are able to stand alone." The paragraph dealing with the A mandates also contains a provision that the wishes of the communities must be a principal consideration in the selection of the mandatory, which, unfortunately, was not acted upon when the mandatories were selected.

In the B mandates the powers of the mandatory are substantially larger. The mandatory is made responsible for the administration of the territory subject to limitations specified, such as, for example, freedom of conscience and religion, which is to be fully enjoyed by the natives, subject only to the maintenance of public order and morals. The mandatory administration is urged to take strong measures against evils and abuses in tropical countries such as the traffic in slaves, liquors and arms. Other provisions in the B mandate deal with the open door policy and provide for equal opportunities for the trade and commerce of all the members of the League of Nations.¹⁹ The establishment of fortifications or military and naval bases and military training of the natives for other than police purposes and defense of the territory are also provided against.²⁰

¹⁹ The United States of America, although not a member of the League, yet was accorded the same privileges with regards to the Open Door. See below, ch. vi.

²⁰ The B type of mandate is according to some writers the normal type with A and B variations towards opposite directions. See *Das Voelkerrechtliche Mandat*, by Wolfgang Schneider, p. 63.

In the C group fall such territories as South West Africa and the German Islands in the Pacific, which owing to their sparseness of population or their size, their remoteness from centers of civilization, or their geographical contiguity to the territory of the Mandatory, are to be governed by the laws of the latter as portions of its territory, subject to the same provisions, however, as apply to territories of the B group.

Further provisions of this article are: that, in all types of mandate, the mandatory Power shall render to the Council an annual report in reference to the territory committed to its charge; that it falls to the Council to define explicitly the degree of authority, control or administration to be exercised by the Mandatory, if not previously agreed upon by the members of the League. The last paragraph provides that a permanent commission shall be constituted to receive and examine the annual reports and to advise the Council on all matters relating to the observance of the Mandates.

The language used here is of a general character. It is a mere outline of what the administration of these territories was vaguely intended by its authors to become. As remarked above, this article was not written by legal experts (by whom it was not even scrutinized), but by practical politicians with idealistic inclinations. The spirit of a compromise runs all through the article. Had it been written by legal experts, Article 22 would not have been a part

of the League Covenant, and, consequently, not of the Treaty of Versailles. For, if Article 22 had defined in clear legal terms the relation that was to exist between the Mandatory and the mandated territory, and between the Mandatory and the League of Nations, it would, in all probability, have proven unacceptable, either to President Wilson or to the potential mandatories. The points of conflicts were many and some of them irreconcilable. But, although in the legal phraseology no formula could be found on which both sides could agree, the English language, in which the original was written, could furnish a few happy phrases which could be made acceptable to all. The imperialists got what they wanted and the idealists succeeded in qualifying such grants by providing for securities for the due performance of this trust created.

The credit for the inclusion in the Covenant of the League of this mandatory principle with respect to the administration of backward areas, and of making the Covenant an integral part of the Treaty of Versailles, is due almost solely to President Wilson, who fought for it bravely, stubbornly and single-handed. It is this fight that entitles Wilson to share equally with Smuts the honor of introducing this new principle into international law. Not only must he have influenced Smuts through his many speeches and messages during the War, but to him goes the credit of carrying them to realization. Reading the writings of the time of the Peace Conference, as well as the

official and personal accounts of what went on at the meetings of the Supreme Council, one can understand why President Wilson is considered to have been the father of the League, and, more than anybody else, to have presented to the world at large a hope for a new world order.

The final draft of the Covenant was finished and adopted by the Peace Conference at its fifth Plenary Session on April 28, 1919. It forms Part 1 of the Treaty of Versailles. The mandatory principle came legally into force on January 10, 1920, when the Versailles Treaty was officially declared ratified. Altogether fourteen mandates were created which were distributed to eight mandatory Powers, five of which went to the British Empire or to some member thereof. Of the fourteen, three countries fell into the A group: Iraq or Mesopotamia, Syria and Lebanon, Palestine and Transjordan; six into the B group: Tanganyika, which was formerly German East Africa, Ruanda-Urundi, British Togo, British Cameroons, French Togo, and the French Cameroons; five into the C group: South West Africa, New Guinea, Samoa, South Sea Islands, and Nauru. These territories together include about a million and a quarter square miles inhabited by a population of over twenty millions.

The allocation of the mandates to the respective mandatories was undertaken by the Supreme Council and not by the Council of the League of Nations. For, under the Versailles Treaty, Germany trans-

ferred her full sovereign rights over her former possessions to the Principal Allied and Associated Powers.²¹ The B and C Mandates were allocated on May 7, 1919 by the Supreme Council, the A Mandates on April 25, 1920.²²

Reviewing the provisions of the mandates system we observe that the following changes occurred since the first plans were proposed for a reform in colonial administration. It is first to be noticed that if by establishing mandatory government for colonies it was expected to remove all evils connected with their pre-war form of administration, the hope was only partially fulfilled. For only such territories are administered under this system as formerly belonged to Germany or Turkey.²³ The greater bulk of colonial possessions still remains outside of it, although it is to be hoped that the success of mandatory government will influence beneficially all colonial administrations. Another change to be noted

²¹ Art. 119 of the Versailles Treaty reads as follows: "Germany renounces in favor of the Principal Allied and Associated Powers all her rights and title over her oversea possessions." Art. 16 of the Treaty of Lausanne, between Turkey and her former enemies, signed at Lausanne, July 24, 1923, reads as follows: "Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present treaty—the future of these territories and islands being settled or to be settled by the parties concerned." See ch. viii of this study for the legal implication of these provisions.

²² For further details in connection with the distribution of the Mandates, see chs. vi and vii, dealing with the respective Mandates.

²³ Kia-Chow was not considered a German colony. See Miller, I, 186-187.

is that the mandatory principle does not extend to any territory in Europe, as was intended by Smuts. Such territories in Europe as tore themselves away from the Russian and Austro-Hungarian Empires and formed themselves into new republics, were declared fully independent.²⁴

Contrary to the provisions in the Wilson and Smuts drafts, the League of Nations is not given the full control over the distribution of the mandated territories. The nations are to be governed on behalf of the League, and to the League is delegated the right of supervision over their administration, but only after the mandatories have been previously decided upon by the Supreme Council. Contrary again to the German²⁵ proposals, the League is not given the right of direct supervision over the administration of the mandated territories. The supervision of the League is exercised in an indirect manner, through annual reports, by receiving petitions from the inhabitants of a mandated territory, and through questioning the accredited representatives of the mandatory Powers by the Members of the Mandates Commission. It has been found necessary, also, to

²⁴ Except for the provisions for the protection of minorities which possess some resemblance to the mandatory principle.

²⁵ In the German scheme for a League of Nations, art. 9 dealt with the problem of colonial administration. It provided for a universal colonial office, with Commissioners of the League of Nations to be sent to every colony to superintend the observance of the provisions enumerated in their plan. Germany, according to this plan, would be allowed to keep her former possessions, subject to the above-mentioned supervision. See S. Doc. 149, above cited, p. 20.

devise three types of administration, and to give in the case of C Mandates, powers that amount nearly to annexation. Otherwise the British Dominions could not have been won over to the acceptance of the mandates principle at all.

With all its compromises and shortcomings the mandatory form of government establishes a step forward in the troubled question of colonial administration, and as such it deserves to be studied by all those who have at heart the interests of peace and civilization.

CHAPTER III

CONCEPTS AND PRINCIPLES

The new form of administration in certain colonies and provinces, inaugurated as the result of the World War, the development of which has been traced in the preceding two chapters, has been named the mandatory system of government. The name is misleading, as is frequently the case in the terminology of political science, for it conveys the wrong idea of what is essential in this new form of government. Not only is the mandatory principle, namely, the feature of delegation of powers by those who possess them to another person to exercise them, not the sole characteristic of what has come to be known as mandatory government, but it is not even the most important one. The name " mandates system " is therefore the cause of many a misconception of this innovation in colonial administration.

Another misconception about the mandates system is the prevalent belief, very often repeated, that the mandate is an altogether new concept in both colonial administration and in international law. By calling it " new " many thus fail to obtain a clear appreciation of the many problems that abound in the concepts of the mandates system, in the theory of it, and in its application. It is the aim of this and the following chapters to ascertain what are the

fundamental concepts that lie at the base of the mandates system, as well as to show the ideas and events of the past which influenced, directly or indirectly, the formation of Article 22 of the Covenant of the League of Nations. It is hoped that it will be proved that the mandates system is only one step forward in a process that has been continually developing in a fast progressing world. Although it cannot be hoped that all the problems of the mandates system will be successfully solved, the approach to them will be made with a clearer understanding.

Analyzing the various provisions of Article 22 we find three different legal concepts, all taken from private law, but many times previously applied in international practice, which form the foundation of the government of the mandated territories, and should, for that matter, be also the foundation for the government of all colonial possessions.

The first is the concept of trust or trusteeship. Paragraph one of Article 22 provides that, in the government of the mandated territories, "there should be applied the principle that the well-being and development of such peoples form a *sacred trust* of civilization." And, in the following paragraph "that the tutelage of such people should be *entrusted* to advanced nations." The second concept is that of tutelage or guardianship. This concept is brought out by the use of such phrases as "tutelage," "such peoples who are not able to stand by themselves"; and, in the case of the A mandated territories, that they shall be given "advice and assis-

tance until such time as they are able to stand alone.” The mandatory feature is expressed in a rather vague phrase which has necessitated interpretation by the Council. After declaring that the government of such peoples is entrusted to advanced nations who are willing to accept it, without specifying by whom it is to be entrusted, paragraph two ends as follows: “and that the tutelage should be exercised by them as Mandatories *on behalf of the League of Nations*.” These concepts as used in international law in connection with the mandates require further elucidation.

In private law a “trust” is understood to be “a right of property, real or personal, held by one party for the benefit of another, distinct from its legal ownership.”¹ It arises “where property has been conferred upon one person and accepted by him for the benefit of another. The former is a trustee, and holds the legal title, and the latter is called the *cestui que trust*, or the beneficiary. In order to originate a trust, two things are essential—first, that the ownership conferred be connected with a right, or interest or duty for the benefit of another; and, second, that the property be accepted on these conditions.” Trust may mean either one of the three things, namely: “the equitable title of the beneficiary, the obligation, or the right held by the trustee.” A special trust is where special or particular

¹ This and the following quotations with regard to the law of trust in private law is taken from the article dealing with this subject in Bouvier's *Law Dictionary*, III, 3329-3340.

duties are pointed out to be performed by the trustee. A trustee is "a person to whom property has been conveyed to be held or managed for the benefit of another." The duties of the trustee have been said in general terms to be: "to protect and preserve the trust property and to see that it is employed solely for the benefit of the *cestui que trust* or the beneficiary." Another rule with regard to trust in private law is that "the office and duties of trustees, being matters of personal confidence, they are not allowed to delegate these powers unless such a power is expressly given by the authority by which they were created; but a trustee may appoint another person where it is usual to do so in the ordinary course of business. The power of equity to remove a trustee and to substitute another in his place is incidental to its paramount duty to see that the trusts are properly executed, and may properly be exercised whenever his continuance in office would be detrimental to the trust." ²

From the above enumeration of some of the powers and duties of a trustee it is seen that, although the elements of a trust, as it is practiced in private law, are obviously present in the international trust now under consideration, no perfect analogy can be drawn between the two. For not only must an inter-

² As to the question of negligence and the dissolution of a trust on account of it, see ch. ix below, where this and other questions dealing with interpretation of legal questions of the mandates system will be discussed.

national trust, owing to its very nature, differ from a private one, but even the conditions of grant, and of the various persons who must necessarily partake in a trust, are different. There is no doubt that the Principle Allied and Associated Powers in whom the sovereignty over the German colonies and the Turkish provinces in the Near East was by treaty vested, had the full right to appoint a trustee to govern these territories under any conditions they chose to impose. But to whom was the trust granted?

Trust implies two estates of interest—one equitable, and one legal; the person acting as trustee holding the legal title, while another, as *cestui que trust*, has the beneficial interest. There are many authorities who doubt the legal personality of the League of Nations, and, according to them, the League could not assume the responsibility of a trustee, and therefore, could not hold the sovereignty over the mandated territories, so as to correspond to the possession of title to property held by a trustee in private law.³

But, even if we assume that the League could hold a trust, to whom would it then be held responsible in case of a violation of a trust? As was said by M. Paul Hymans, the Belgian Representative on the Council, in his famous Report, to be discussed later in this study: “there is no legal responsibility ex-

³ A discussion of the personality of the League will be found in ch. viii below, where the situs of sovereignty in mandated areas will be considered.

cept in respect of another person. Now, the responsibility of the League of Nations could only occur in respect of the populations who are under mandatory rule. But it is difficult to see in what way this responsibility would be organized, or what measures could enforce it. *Qui custodiet custodes?* ”⁴ Again, the League of Nations does not exercise the trust itself; it is exercised by third parties, the mandatories, over whose selection it was not even consulted. The mandatory Powers could not then even be considered as agents of the League of Nations. The Mandatory cannot be said to be the full and only trustee, for then the League of Nations would be in a precarious position, for it is the League that is generally looked upon as the trustee of the mandated territories, and not the mandatory Powers. Besides, the phrase “and that the tutelage should be exercised by them as mandatories on behalf of the League of Nations ” would then lose all its meaning. Yet, in spite of these dissimilarities, the spirit of trusteeship as it is practiced in English Common Law is certainly to be found in the mandates system and must have exerted an influence upon the authors of Article 22.⁵

⁴ League of Nations Assembly Doc. 161, Annex 4, p. 17.

⁵ In an address delivered before the Royal Colonial Institute on December 20, 1921, and which is reprinted in the February, 1922, issue of the *United Empire*, Mr. D. Campbell Lee, who is of the opinion that the League of Nations is not a state but a method (p. 85), proposes an amendment to the Covenant that whenever the word Mandatory occurs there should be added the word trustee. He thus implies that the Mandatory, not the League, is the holder of the

A concept very similar to the concept of trusteeship is that of guardianship or tutelage. In private law guardianship is meant to be the "power or protective authority given by law and imposed upon an individual who is free and in the enjoyment of his rights over one whose weakness on account of his age renders him unable to protect himself."⁶ The relation thus created is called the relation between guardian and ward, and, like a trustee in equity, the guardian is not allowed to reap any benefit from his ward's estate.⁷ The guardian has legally the care and management of the person or estate, or both, of the ward during the latter's minority.

Unlike the concept "trusteeship" which is the typical English contribution, through the law of trusts in English Common Law, to the mandates system, the concept of guardianship is drawn mainly from the Civil Law of the European Continent.⁸ Here, also, it is very difficult to ascertain who the guardian is. Is the League of Nations, or the particular mandatory, the guardian of the mandated territories?

There are many instances in international law in which weaker nations have been given the status

trust. Such an addition, he thinks, would help people understand what the Mandate is, and the Mandatory would know what responsibilities it is expected to live up to.

⁶ Bouvier, II, 1396.

⁷ Ibid., p. 1393.

⁸ Guardianship is now practiced also in England and in the United States but it was unknown as such in Common Law. See Bouvier, *ibid.*, p. 1391.

of wardship. Professor Fenwick⁹ has described wardship to be "the status of a political community, designated, either as state, protectorate, colony or dependency, which possesses a sufficient measure of autonomy to be regarded as having an international personality of its own, yet which is limited in its freedom of action by another state or a group of states which hold toward it the position of trustee or guardian of its interests."¹⁰ The concepts guardianship or tutelage is then not a new one to international practice and must have also influenced the authors of Article 22. Specific instances of such relationships between civilized nations and backward peoples will be given in the next chapter. The addition of this concept helps greatly to clarify the relation and the respective rights and duties of the mandatory and the inhabitants of a mandated territory.¹¹

The third concept which lies at the foundation of the mandates system, and which gave it its name, is that of mandate. Literally, this term means a regulation or direction.¹² In early Roman Law a mandate was a trust or a commission by which one person,

⁹ *Wardship in International Law*, Government Printing Office, 1919.

¹⁰ *Ibid.*, p. 5. In this book Fenwick enumerates a number of instances of wardship in international practice.

¹¹ Professor Fauchille, in his *Droit international public*, in discussing the mandates system, usually calls it *mandate-tutelle*, thus stressing the element of tutelage in the mandates system, which a Frenchman understands better than he does the concept of trust.

¹² See Bouvier, II. Article under mandate. See also an article by Professor Goudy "On Mandatory Government in the League of Nations" in the *Journal of the Society of Comparative Legislation and International Law*, Third Series, 1919, pp. 175-183.

the mandator, requested another person, the mandatory, to act on his behalf. It was a contract by which one party agreed to execute gratuitously a commission received from another. All legal rights and responsibilities as to third parties were held by the mandatory. The mandate was to be performed gratuitously, and was entered into voluntarily. The mandatory was responsible only for gross negligence, but had to render an account of his actions and show that he complied with the terms of the mandate. He was to be repaid for the legitimate expenses incurred during the performance of the mandate. A mandate might be dissolved by revocation of authority by the mandator. A mandate might be special, that is, for one particular transaction only, or general, to manage all the affairs of the person. A mandate could be either indefinite as to its duration or for a fixed period, and might be with or without conditions. In Roman Law the purposes of the mandate could be infinite, namely for the benefit of the mandator alone, or also with benefit to the mandatory or to a third party, but never for the sole benefit of the mandatory. If the mandate were in favor of a third party the latter's consent, expressed or implied, had to be given.¹³

Like the two other concepts above considered there is an analogy between the mandate as it was used in

¹³ The nearest approximation to the mandate in English Common Law is the law of agency; but agency differs from the mandate owing to the English law of consideration. The English Law of trusts is, in a sense, a kind of mandate. See Goudy, *ibid.*, p. 179.

private law and its international usage. But the analogy must necessarily be a vague one. Who is the mandator in this case? It certainly is not the League of Nations, as it was not its Council, but the Supreme Council of the Principal and Associated Powers, that distributed the respective mandates. This latter body, however, is now, and has long been, out of existence, a fact which adds little to the clarification of the point at issue. Legally speaking, the present mandator cannot be ascertained—just as the trustee or the guardian cannot be pointed out with full degree of certainty.

Besides these, there are many other differences between the concepts of trusts, tutelages and mandates as used in private law and as used in international law. These will be treated later in this book; but there is one fundamental difference which deserves to be especially mentioned, for it goes to the root of the whole system, and partly destroys the slight analogy there is between the respective applications of the concept. According to legal principles, no one can be forced to accept a benefit against his will.¹⁴ Yet there is at least one case in the mandates system where not only was the consent of the inhabitants not asked for, but was directly in opposition to their expressed will.¹⁵

¹⁴ Goudy, p. 181.

¹⁵ Such was the case of Syria where more than sixty per cent of all petitions presented to the American Commission, the famous King-Crane Commission sent by President Wilson to sound the sentiment of the Near Eastern peoples as to what relation they would prefer

Summarizing all that has been said about the sources of the concepts of the mandates system, it can now be stated that the three concepts, trust, guardianship, and mandate, all taken from private law, have exercised a noticeable influence, the first two as to its spirit, the latter as to its method mostly, on the construction of Article 22, although they are in no way like a transfer from private to international law. The largest possible number of duties have been imposed upon nations who were bent upon gaining full possession of these territories with no obligations and responsibilities to any outside body attached to them; and a method of international supervision has been devised which has gone the farthest possible without encroaching unduly upon the sovereignty of the mandatory Powers. Considering the fact that the mandates system is a result of a compromise between two directly opposite forces, the concessions gained for the benefit of the inhabitants of the mandated territories as well as the provision for an "open door" policy, which makes for international good will, at least balance the gains which the Mandatory expected to reap from administering of such territories. The further fact that the mandatory Powers have to report annually the progress of their work in their respective mandated territories, and that all their administrative acts are open to the conscientious scrutiny of an able and ex-

to exist between themselves and the civilized nations, directly and strongly protested against any French Mandate. See Baker, II, ch. xxxiv.

perienced commission, is further security that obligations entered into will be lived up to. Otherwise, the mandatory Power exposes itself to deserved criticism from an international public (a strong and growing force), leaving out criticism at home, which is also daily becoming a greater and greater factor for the government in power to consider.

As a result of the concepts above discussed, and which form the essence of mandatory administration, there follow a number of principles that have become organically associated with it. The first and most important of all is the principle of "no annexation," so eloquently preached during the war days. It is this principle that most distinguishes the mandates system from similar cases as practiced before the war. The administering power in any mandated territory is not there by any right of possession, but as a Mandatory with specifically delegated powers. The rights and privileges of the inhabitants are not given to them because the controlling Power chooses to be liberal and progressive; they enjoy them because of international obligations publicly entered into. The principle of no annexations was agreed to be operative even by the Union of South-Africa,¹⁶

¹⁶ See the heated debate between Mr. Van Rees, Vice-Chairman of the Permanent Mandates Commission and its outstanding legalist, and Mr. J. S. Smit, High Commissioner of the Union of South-Africa in London, as to the question of sovereignty in the mandated territory of South West Africa in which Mr. Smit finally stated that his government has not annexed the territory of South West Africa and has never tried to annex it. Minutes of the Eleventh Session of the Permanent Mandate Commission, p. 91.

which, more than any other Mandatory, took a rather wide view of its powers as administrator.

As a sequence of the principle of no annexations, there follows the principle of international supervision. International administration of colonies or direct international control would never have been agreed to by any sovereign Power. International supervision was, therefore, the only resort left. This supervision was to be exercised by the Council of the League, assisted by a commission under the League of Nations, in a systematic manner so as to ensure that what had been gained was not to be lost through improper guarding, as had been the case in similar attempts in the past.

Besides, not having annexed the territory, and being subject to international supervision, the work has to be done gratuitously, for no benefits are allowed to accrue to the Mandatory on account of its administering a mandated territory. The principle of gratuity follows from the concept of trusteeship as well as from the concept of guardianship. This principle is also called the principle of "no-benefit," and it is this feature of the mandates system that gives the mandate the character of an obligation rather than a privilege. The Mandatory is not to be paid for its administration and must not pass any legislation favoring its own nationals in preference to those of other countries. This principle is best illustrated by the Open Door policy which is in operation in the territories governed as A or B mandates.

The history of the open-door policy goes back to the relations of the Powers to China.¹⁷ The doctrine of the most favored nation clause is the parent of the open-door and is characteristically an American Doctrine.¹⁸ The open-door policy is defined by the Dictionary of American Government to be "equal opportunities and treatments for the citizens of all foreign countries and their enterprises in some particular territory."¹⁹ In other words, it is a limitation upon the tariff autonomy of a certain territory. It is unnecessary to add that such limitations could be imposed only upon such weak nations as generally, but not always correctly, go under the name of backward nations. Usually they are imposed by a treaty entered into by the granting Power with each Power separately, as is the case with China and Siam, or by a treaty concluded by the trading nations themselves regulating the conditions under which one or more of them is given the right of territorial overlordship over the area in question.

Were the Open Door not specifically provided for in the respective mandate charters of the A and B

¹⁷ For a general discussion of the open-door see *The Open Door Doctrine*, by Mingchien Joshua Ban. See also W. W. Willoughby, *Foreign Rights and Privileges in China*, II, ch. iv.

¹⁸ Ban, above mentioned, Introduction XIII. See also Official Correspondence by Secretary Hay with the Powers, relating to the Open Door Policy in China. H. Doc. No. 547, 50th Cong., 1st sess.

¹⁹ Quoted by the *Dictionary of Tariff Information*, U. S. Tariff Commission, 1924, p. 536. For a thorough discussion of the Open-Door doctrine and the tariff in the colonial possessions of the imperialistic Powers see *Colonial Tariff Policies*, U. S. Tariff Commission, 1922; also T. E. G. Gregory; *Tariff, a Study in Method*, and *Economic Protectionism*, by Josef Grunzel.

Mandates, it would have been installed in these territories as a consequence of the acceptance of the concept of trusteeship. The Open Door, however, does not mean free trade or even limited tariff rates, with which it is often erroneously confused, for then the industrial development of the mandated territory would be greatly handicapped and would be a contravention of all that mandatory administration should imply.²⁰

There are other provisions in the mandates dealing with slavery, traffic in arms and liquor, etc., which have been drawn from previous international action. A discussion of them at this point is unnecessary as the sources from which they were drawn will appear when the antecedents of the mandates is discussed in the chapter which follows.

²⁰ The acceptance of this view would seem to drive away certain criticism used against the open-door doctrine, namely, that "it is the price paid by the West for a continuation of inefficient government in the affected territories." Shields quoted by Gregory, p. 37. For, as said above, it is equal opportunity and the policy of no discrimination that is the essence of the Open Door, and not the fact that there is a lack of power by the governing authority of an open-door territory to regulate itself its own tariff policy.

CHAPTER IV

ANTECEDENTS AND PRECEDENTS

The territories within which the mandates system is in operation form only a small fraction of the many colonies and territories that are still ruled by the imperialistic Powers.¹ Some of the problems which the mandates system is expected to solve are present in all colonial possessions. It is therefore proper to introduce now, before the antecedents and the precedents of the mandates system are discussed, a few general remarks on colonial rule and the difficulties that are inherent in it.²

Colonial government in territories not contiguous with the territory of the mother country, involves a large number of problems.³ First, mention has to be

¹ The United States calls its colonial possessions territories or dependencies, although they are in most respects similar to those of other imperialistic Powers.

² The purpose of this chapter in recording some of the antecedents of the mandates systems is twofold:

(a) It will give a historical picture of the development of some concepts in colonial government, and

(b) It will help to explain the inception and working of mandatory administration.

³ The best book that deals with the difficult problems of colonial government is the book written by Sir, now Lord, F. D. Lugard, under the title, *The Dual Mandate in British Tropical Africa*. Lord Lugard based his analysis and observations on a long experience as administrator in the tropics. Lord Lugard is at present the British member on the Mandates Commission.

given to such obstacles to mutual understanding as those presented by difference in race, climate, traditions, religion and language. These differences, if they are not overcome, are serious impediments to the accomplishment of the ends sought by the controlling authority, whatever those ends may be: the spread of a religion, acquisition of strategic points for commercial and military purposes, or even for some scientific purpose. The particular conditions of every territory have to be studied and understood in order that mutual adaptation may follow.

The capacity for understanding and adaptation has always been rare in colonizing Powers, owing mainly to the psychology of nationalism and its complexes. This fact explains a number of failures in colonial administration. In the past, the Roman Empire, and, in the present times, the British Empire, through trial and error extending over a number of centuries, with sometimes costly failures, have acquired a training for colonial success to a greater degree than any other Powers, most of whom have failed to learn from their earlier mistakes. The best illustration of this point is the phenomenal decline of Spain's colonial Empire. Spain, with, at one time, large and rich colonial possessions has lost all she once had.⁴ Since the mandatory system of govern-

⁴ There are a number of books dealing with the many questions of Colonial Government, besides Lugard, above mentioned. *Colonial Administration, 1800-1900*, by O. P. Austin, gives a thorough discussion of the methods of Government adopted by the principal colonizing Powers during that period. It is full of selected quotations from

ment has been adopted to rule only those peoples "who are not yet able to stand by themselves under the strenuous conditions of the modern world," it will not be necessary to discuss such colonies as were primarily settled by emigrants from the mother country, such as Canada, Australia, and the other British Dominions. It may be observed, however that, at the beginning, even they were treated as if they were backward and were to be exploited in the interest of the mother country. It took a number of revolutions to convince Great Britain that there was a difference between colonists and natives.⁵ Even in the latter case certain changes and developments have occurred from time to time which have tended to humanize more and more the relations between ruler and ruled. These developments have come as a result of two causes: one, humanitarian, which advocates giving the aborigines the same rights of person and property as the white men possess; the other, political and military, due to the discontent of the aborigines.

As a general rule it can be stated that those nations who have best learned to combine their own advantages with benefit to the natives, and who have

writers of authority on all questions discussed, and has an admirable bibliography. The best study of comparative colonial government in modern times is, perhaps, by P. Leroy-Beaulieu's *La colonization chez les peuples modernes* (2 vols.). A shorter study on the same subject was written by V. Shiva Ram, *Comparative Colonial Policy*.

⁵ Thus the loss of the American colonies is generally believed to have been responsible for the inauguration of a sounder policy by Great Britain in her colonial possessions.

been ready, when necessary, to sacrifice their own interests for the welfare of the natives, have been the most successful in their colonial enterprises. It took centuries of colonial experience, and a great loss in men and money to learn this elementary and basic rule of colonial administration.⁶ One has to admit that mutual understanding and cooperative action with the natives for the education and civilization of the latter was made even more difficult by the often questionable means by which the colonizing Power had gained control over the natives and their territories. Thus, most occupations of territory in tropical Africa were based on treaties entered into by European adventurers with native chiefs. The chiefs, as a rule, did not know the contents of the treaty they signed. In one case, an African Sultan, on signing such treaty, regarded the subsidy promised to him by the chartered company as a tribute from a vassal.⁷ "Ignorance of African conditions, and perhaps a latent feeling that the ends justified the means, induced the rulers of the nations of Europe to accept these treaties without too close a scrutiny, and to persuade themselves that the omelette had been made without breaking any eggs."⁸

The best that one can say for such a method of acquisition is that, in a great number of cases, the

⁶ The losses in men and money were at times so great as to cause a general doubt as to the benefit to be derived from the acquisition of colonies.

⁷ Lugard, p. 15.

⁸ *Ibid.*, p. 17.

rule installed by Europeans, with all its imperfections, was preferable to the one displaced. But the assumption of control of the African tropics by European imperialistic Powers can be justified only if their government is conducted for the benefit of the aborigines. If the benefit of the governed is made the primary interest, it will usually follow that officials sent out to govern the natives will be of a high character and adapted to the task before them. "The white man's prestige must stand high where a few score are responsible for the control and guidance of millions."⁹ Moreover, they will be given the necessary powers to work independently as the occasion may demand without undue interference from the home government. If such be the case, and only then, can success in colonial government be looked for.

Before an international voice was heard colonial governments passed through a number of stages, usually starting with a discovery or visit by some adventurer or explorer, through government by chartered companies or trade organizations to the final incorporation by the controlling Power under full sovereignty. These advances to closer and closer control by the home government were prompted by political and humanitarian reasons, as private companies, which were mainly business corporations having to look out for the stockholders' interests, and proved to be unable to cope with the many difficulties of colonial administration. So that, whenever,

⁹ Lugard, p. 59.

in the past, there were official expressions or acts along the line of the principles which the mandatory system of government introduced into international law, such expressions or acts may be looked upon as precedents to one or more of the principles of the mandatory system. Of such precedents or antecedents there were a large number, but, in the discussion which follows only such will be mentioned as influenced directly or indirectly the authorship of Article 22, or explain its various features.¹⁰

The short history of American imperialism presents a fair antecedent to the mandatory principle of government. President McKinley justified American annexation of the Philippine Islands on humanitarian grounds. Instructing the Philippine Commission who went to the occupied islands to establish there a government, he declared that the government to be established "is not designed for our own satisfaction or for the expression of our theoretical views, but for the happiness, peace and prosperity of the people of the Philippine Islands." Later on in his speech he added that "the welfare of the people of the islands which should be a paramount consideration, shall be attained consistently with this rule."¹¹

¹⁰ This subject of antecedents of the mandates system has attracted a number of writers and incidents have been uncovered that could hardly come under that title. See an article by Luther H. Evans, "Some Legal and Historical Antecedents of the Mandatory System," in the *Proceedings of the Fifth Annual Convention of the South-western Political and Social Science Association*, 1924.

¹¹ "America's Precedent for Mandates," *Review of Reviews*, Jan. 1920, p. 20.

So did Chamberlain, Secretary of State for the Colonies in the British Cabinet, exclaim in 1893 that "it is our duty to take our share in the civilization of Africa."¹²

Besides such official declarations for a humane relation to natives in acquired colonies, there were several international conferences where resolutions were adopted that bear a great resemblance to the principles of the mandates system, and to these we shall turn our attention. A number of reform organizations were formed in Great Britain, the first one as early as 1791.¹³ Through their efforts, the African slave-trade was prohibited to the citizens of Great Britain by an act of Parliament in 1807. In 1837 slavery was abolished in all British colonies. A study of the relations to colonies was then undertaken. In 1835 a society was formed which called itself "The British and Foreign Aborigines Protection Society."¹⁴ This society was so influential that a select committee was appointed in the House of Commons "to consider what measures ought to be adopted with regards to native inhabitants of countries where British settlements are made, and to neighboring tribes, in order to secure to them the observance of justice and the protection of their

¹² Quoted by John Leslie Buell. *International Relations*, p. 301.

¹³ This and the following facts are drawn largely from the book by Stone, *The Questions of Aborigines in the Law and Practice of Nations*.

¹⁴ In 1909 this society merged with the British and Foreign Anti-Slavery Society and is now known as the British Anti-Slavery and Aborigine Protection Society.

rights, to promote the spread of civilization among them and to lead them to the peaceful and voluntary reception of Christian religion.”¹⁵ The report presented by the Committee is a very important document in the history of the principles now secured by the mandates system. It proposed to civilize the aborigines for the reason that “it is greatly to our advantage to have dealings with civilized men rather than with barbarians.” The Committee came to the conclusion that “the effect of European intercourse had been upon the whole a calamity to the heathen and savage nations,” and suggested that the protection of the aborigines should be considered as a duty particularly belonging and appropriate to the executive government as administered either in the country or by the governor of the respective colony. The report contained a number of suggestions as to how to humanize and liberalize the treatment of the natives. When one considers that this report was written at a time when the Africans were looked upon as mere chattels, and when the slave-trader was not only not contrary to the law of nations but not contrary even to the morals of the time, one can appreciate how valuable a precedent it was for a humane and liberal treatment of backward peoples.

The humanitarian movement of the latter quarter of the eighteenth century, as expressed by the American Declaration of Independence in 1776, and the similar French Declaration of the Rights of Man,

¹⁵ *Ibid.*, p. 10.

helped to bring the question of slavery and slave trade to the attention of Europe and America.¹⁶

The Congress of Vienna, 1814-1815, denounced trade in slaves. It declared that the slave trade was repugnant to principles of humanity and morality, and expressed itself in favor of putting an end to an evil "which has so long desolated Africa, degraded Europe and affected humanity." Concerted action for its abolition was, however, not taken. The Congress of Vienna, it must be remembered, was a meeting of representatives of sovereigns, not of states, and it was not, therefore, likely that any sovereign at that time would agree to let an international commission interfere within his sphere of influence. The Congress, however, recognized that there was a moral obligation upon the part of each sovereign to abolish trade in slaves within the lands ruled by him.

At the Congress of Aix-la-Chapelle, Russia proposed to institute an international commission of surveillance with specified powers, among which was the power to operate an international fleet, with the set aim to see to it that trade in slaves was effectively stopped. The Russian plan was not accepted by the Powers for they feared that the intervention of an international body would be in derogation of their

¹⁶ Note the experiment to settle negroes freed from slavery in Sierra Leone. Lord Mansfield's judgment in 1772 that a slave becomes free upon setting foot in England, freed many slaves who were transported from England and settled in Sierra Leone, on the African Coast. See Buell, *The Native Problem in Africa*, II, ch. liii.

sovereign powers. Individually, however, the nations participating in the Congress, one after another, prohibited trade in slaves, as a part of their own national law. Still, the abominable trade did not come to an end because there was lack of proper enforcement, which, in turn, was mainly due to lack of international cooperation.

The next international step with regard to the question of relations between the Western States of Europe and the backward populations of their colonies, was unquestionably the Berlin Conference of 1884-1885. Here a little historical introduction is necessary in order to explain how the conference came to be convened. The travels of Stanley and Livingston in Central Africa attracted the attention of scholars, explorers and politicians. King Leopold II of Belgium called together a Conference at Brussels with the declared purpose "to open to civilization the only part of our globe where it has not penetrated."¹⁷ The result of this conference was the establishment of an international association for the exploration and civilization of Central Africa, with Leopold as its president. This international association undertook the occupation of Central Africa with the intention of founding there a Negro State.

This association was recognized as a state by the United States in 1884. In order to make this recogni-

¹⁷ Such was the declaration of Colonel Strauch, Secretary of the Association, Buell, II, 416.

tion a general one, and to define the rights and duties of the association, a conference was assembled at Berlin at the call of Prince Bismarck. The result of the conference was a declaratory act of a legislative nature known as the Berlin Act.¹⁸ The following provisions of the Berlin Act are pertinent to our discussion: Article 1 provided for freedom of trade in the whole region forming the basis of the Congo and all its outlets. This privilege was to be enjoyed by the signatory Powers, and by such independent states as might approve the same. Article II provided for free access of all flags to the coast line. Article VI declared "that all the Powers exercising sovereign rights or influence in the aforesaid territories bind themselves to watch over the preservation of the native tribes and to care for the improvement of the conditions of their moral and material well being, and to help in suppressing slavery and especially slave trade." They also undertook to help all institutions which should aim at instructing the natives and bringing home to them the blessings of civilization. Other clauses of the same article provided for religious tolerance and freedom of conscience of the natives and for the free exercise of all forms of divine worship. The report, for the first time in international history, declared that trade in slaves should be forbidden in conformity with the principles of international law as recognized by the signatory Powers. Further provisions dealt with neutralization and the free navigation of the Congo River.

¹⁸ Text of the Berlin Act in Buell, II, Appendix XLIII.

Article XVII provided for the establishment of an international commission to be charged with the execution of the provisions of the act of navigation and with power to negotiate loans. The bases upon which the validity of claims to sovereignty to a particular territory should be recognized was also dealt with by the Berlin Conference. The Conference stressed the necessity for "effective occupation" and declared "the necessity of securing the existence of sufficient authority, in the territories occupied, to ensure respect for acquired rights, and if necessary for freedom of commerce and transit in the conditions in which it may have stipulated." The test of effective occupation was limited, however, to the coast land of Africa.¹⁹

The Berlin Act did not consider a number of very important subjects which it might have considered, due to the fact that national sovereignties abhorred outside intervention. Not only did the Act not mention specifically the traffic in intoxicating liquors which, at the time, was debauching the natives of Africa, but power was not given to enforce those decisions that were agreed upon. Therefore, conditions did not greatly improve as a result of this conference. The slave trade with its atrocities continued to flourish, and even the commercial provisions of the Act were not enforced. Agitation against the mistreatment of the aborigines in Africa by

¹⁹ Lugard, p. 11.

Europeans continued and rose to such a degree that a new international conference had to be convened.

A new Anti-Slavery Conference was therefore held at Brussels in 1889-1890. The Powers represented at this Conference regarded themselves as trustees with the duty of "protecting effectively the aboriginal population of Africa, and ensuring to that vast continent the benefit of peace and civilization." Although the Conference did not solve all the urgent problems that had led to its convening, it made some advance over the Berlin Conference, for it considered more questions, and greatly increased the zone of international influence.^{20, 21} However, the execution of the provisions of the Conference was left to the respective states, as there was no financial provision for an international secretariat.

Among the provisions of the act there was one against the importation of fire-arms and ammunition and traffic in spirituous liquors (Article VIII). There were specific provisions as to combating slave trade by land and sea. An international office was instituted at Zanzibar with the object of centralizing information of a nature to facilitate the repression of the slave trade. This Office had to report annually

²⁰ The Berlin Act was applicable only to the Congo Basin. The principles of the Brussels Act were to extend to all territories in tropical Africa under European control.

²¹ Text of the Brussels Act, Buell, II, App. XLIV, pp. 908-936. Great Britain offered a plan whereby the execution of the Act would be assured, but it failed of acceptance chiefly because of the objection of France. See Stone, p. 99.

as to its activities. The exchange of these documents was to be centralized in a special office attached to the Foreign Office at Brussels. But, as said before, the Brussels Conference, like the Berlin Conference, failed to achieve any tangible results because of lack of adequate enforcement provisions.

In 1900 there was assembled an international Congress of Colonial Sociology attended by delegates who were experts in colonial administration, who, however, did not act as representatives of their respective governments. The conference bore the character of a scientific, not a diplomatic body. Its resolutions, although worthy to be read and pondered upon, were not of an international character such as to be discussed in this chapter. However, it helped greatly to increase the general interest in colonial affairs. The Colonial Institute in Brussels published a number of studies dealing with various phases of colonial administration and pointed out the ways and means by which it could be improved.

We now enter into a discussion of antecedents of a type different from those thus far discussed. These are the various antecedents to the method of government in mandated territories, with or without the ideals of mandatory administration.²²

²² There are a number of such incidents in modern European history. However, only such will be mentioned here as clearly come within the scope of this chapter. See note 1 of this chapter. Some mention the fact that Great Britain would sometimes delegate its powers of administration over a certain territory to one of its dominions as a precedent to the mandatory system. But such a case

The intervention of France in Syria in 1860, on behalf of the Maronites, is looked upon by some international writers as authorized by a special mandate by the concert of European Powers. So, also the United States may be said to have had a moral mandate from the civilized world to intervene in Panama and build there the Panama Canal for the good and commerce of the world.²³ The same may be said of Great Britain's rule of the Ionian Islands.²⁴

In 1898 Prince George of Greece was appointed by Great Britain, France, Italy, and Russia temporarily to administer the Isle of Crete on their behalf. On account of serious internal disorders in that Island the above-mentioned Powers agreed upon a plan, proposed by Russia, that a High-Commissioner should be appointed by the four Powers. He was to rule the Island temporarily under a mandate from them.²⁵ Lord Salisbury proposed that the Provisional Governor should govern the Island for a fixed period of time so that the mandate at its termination could be reconsidered.²⁶ The agreement finally arrived at was as follows: Prince George was given a mandate for three years with the object of pacifying

is not, or at least was not at the time it took place, of an international character enough to be discussed here. See Temperley, IV, 236.

²³ See *Intervention in International Law*, Ellery C. Stowell; also *The Doctrine of Intervention* by Henry G. Hodges.

²⁴ See Butler and Maccoby, *The Development of International Law*, p. 368.

²⁵ See British and Foreign State Papers, XCII, 1216.

²⁶ *Ibid.*, pp. 1219-1220.

the Island, and establishing a normal administration under the suzerainty of the Porte.²⁷ This was really a mandate given to a person, in this case an individual, to govern a territory under specific directions outlined by the mandators.

An earlier and similar plan was proposed by Herr Von Alvensleben, the German Ambassador to Washington, for the government of the Samoan Islands in which Germany, the United States, and Great Britain were all interested.²⁸ The third article of Alvensleben's plan reads as follows: "The Treaty Power which for the time being has the prepondering interest in Samoa shall with the concurrence of the two other Powers appoint a representative to be invested with the functions of adviser to the government of Samoa. He will be appointed for the term of two years, and after the expiration of this period a new nomination shall take place at the same time and under the same conditions. The representative as the mandatory of the three Treaty Powers will be charged with the duty of controlling the measures necessary for the efficacious maintenance of peace and order in general and for the security of the plantations, dwellings, and other property of foreign subjects in Samoa."²⁹

²⁷ As a formality but of legal importance, Prince George, before accepting the mandate from the four Powers, was authorized by the Sultan to accept such a mandate. See *Ibid.*, p. 1234.

²⁸ The Samoan Islands are now administered as a "C" Mandated territory by the Government of New Zealand.

²⁹ *Foreign Relations of the United States*, 1889, p. 213.

As Germany had then the controlling interest in Samoa, the plan, if adopted, would have made a German act as the mandatory for the other two Powers as well. This plan, however, failed of adoption, for, in the words of Mr. Bayard, American Secretary of State, "if the German plan was followed it would necessarily result in creating them into a German possession," and, he assumed, all the Powers had agreed that there should be no annexation of the Islands by any of the Treaty Powers.³⁰ Another American objection was that citizens of the United States would be subject to the supervision of the police of the zealous officers of the German Navy.

What is believed by many to be the best prototype of the mandates system as later adopted was the famous Roosevelt proposals during the Algeiras Conference in 1906, as revealed in the correspondence between the German and American Governments of that period.³¹

The Conference was called together for the purpose of straightening out a dispute that had arisen between Germany and France as to their respective rights in Morocco.³² Here not only was the method of the mandates system proposed, but also the various principles connected with it expounded by the American President. Roosevelt proposed a solution

³⁰ Ibid., p. 22.

³¹ See article by Potter, above mentioned; also another article by same author in the *American Political Science Review*, Nov. 1926, pp. 1842-1847. The whole correspondence appears in the *Life of Theodore Roosevelt*, by Joseph Bucklin Bishop, chs. xxxvi and xxxvii.

³² See Norman Dwight Harris, *Europe in Africa*.

whereby the Sultan of Morocco should enjoy internal autonomy and be entrusted with the organization and maintenance of the police force in all the ports with his own men and officers. The duties of instruction, discipline, pay, and assistance in management and control of the police were to be entrusted to French and Spanish officers. The provision adds that the senior French and Spanish instructing officers should report annually to the Government of Morocco and the Government of Italy,³³ on their accomplishments. Another provision declared "for the open-door both as to trade, equal treatment and opportunity in competition for public works and concessions."³⁴ In a later communication by the then American Secretary of State, Elihu Root, to Baron Speck von Sternberg, German Ambassador at Washington, Root transmitted the Roosevelt message as follows: "If that arrangement—the Roosevelt plan—is made the conference will have resulted in an abandonment by France of her claims to the right of control in Morocco answerable only to the two Powers with whom she had made treaties,³⁵ and without responsibility to the rest of the world, and she will have accepted jointly with Spain a mandate from all the powers, under responsibility to all of them for the maintenance of equal rights and opportunities.

³³ The government of Italy was, under the plan, to have the right of inspection and verification.

³⁴ Bishop, pp. 490-491.

³⁵ These Powers were Great Britain and Spain. See Harris, p. 289.

And the due observance of these obligations will be safeguarded by having vested in another representative of all the Powers a right to have in their behalf full and complete reports of the performance of the trust with the further right of inspection and verification.”³⁶

This plan was adopted and became known as the Algeiras Act. The act, however, failed to realize the hopes its advocates had of it. The main reason for its failure was again the lack of adequate international sanction.³⁷ It, however, served a good purpose in that, once again, and very evidently so, it proved the futility of attempting to solve colonial problems in a half-hearted manner.³⁸

How did the statesmen who gathered in Versailles hope to decide the fortunes of countries and peoples whose fate was in their hands? How were the inhabitants of backward areas to be assured of a fair deal and an opportunity to rise in the scale of civilization? In other words, what international sanction was to be given to the ideals incorporated in the mandates system?

³⁶ Bishop, p. 494.

³⁷ In fact only a few years after the Algeiras Act had passed there arose another dispute between the very same countries as before, but this time it was settled on totally different bases.

³⁸ See *The State of Diplomacy*, by Walter Lippman, ch. x, entitled Algeiras, A Landmark, from where it would seem that the Algeiras Act greatly influenced General Smuts.

CHAPTER V

THE PROBLEMS OF CONTROL AND SUPERVISION IN MANDATORY ADMINISTRATION ¹

There is no need to make, and no attempt will be made, to prove that the tendency toward international cooperation is, at the present time, a strong one.² The world is gradually becoming unified, in more ways than one. This evolution may be viewed, upon the one hand, with alarm, for, with the increase of international contacts grow also the chances for conflicts; but, on the other hand, there is the likelihood that international contacts will create international friendships and understandings. Indeed the conviction has gradually taken hold of men, many of whom carry the fate of nations in their hands, that, unless the civilized nations do cooperate, their very existence will be endangered. It was with this conviction that the mandatory system was created.

Although it is the mandatory government which is held responsible for the execution of the mandate, it cannot, itself, in the nature of things, govern the mandated territory. The administration of the territory must be delegated to the territorial government

¹ The problem of the situs of sovereignty in mandated territories, which because of its great complexity deserves to be treated by itself, will be treated in chs. viii and ix below.

² See *La Communauté Internationale* by Professor Jesse Siddal Reeves, Academie de Droit International, Recueil des cours, III.

which, though subordinate, must work on the general lines laid down by the mandatory government, yet must have wide discretionary powers. This fact, the partial independence of the territories from the mandatory government, may work unfortunately for the mandated territory, for, as is often the case, a government that would give a liberal interpretation to the terms of the mandate may be represented by officials, mostly drawn from its colonial service, who are apt to interpret them too strictly.³

The League of Nations has a double relation to the mandates system. First, the League can be viewed as an association of nations, the members of which are given specific rights in the mandated territories. The United States, though not a signatory of the Versailles Treaty, and therefore not a member of the League of Nations, nevertheless, because one of the Principal Allied and Associated Powers, has acquired by treaty, the same rights and privileges as those enjoyed by members of the League.⁴

Again, the League of Nations can be looked upon as an organized body with delegated powers to perform. Looked upon from this point of view, the Assembly of the League, composed of not more than three representatives from each member state,

³ The development of the Palestinian Mandate is a good illustration of this.

⁴ See International Conciliation No. 166, September, 1921, for correspondence between Great Britain and the United States, respective economic rights in the mandated territories; see also *Mandate for Palestine*, prepared by the Division of Near Eastern Affairs, Government Printing Office, 1927.

and which meets only once a year,⁵ has the power to deal with any matter within the sphere of the League or affecting the Peace of the world;⁶ and the Council of the League, composed of five permanent and nine temporary members, both bear a direct relation to the administration of mandated territories. But more important than both, from the point of view of actual practice, is the Permanent Mandates Commission,⁷ which, according to the last paragraph of Article 22, is to advise the Council on all matters relating to the observance of the mandates.⁸

In order to complete the enumeration of all the factors in mandatory administration it should be added that third Powers, not members of the League, with the exception of the United States, presumably enjoy no rights whatsoever in the mandated territories, except what may come to them as being signatories to reciprocal or international agreements. The Permanent Court of International Justice needs also to be mentioned. Every mandate charter contains the following provision: "The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the

⁵ If occasion arises a special assembly may be summoned. Such was the case in March, 1926, when a special assembly was convened for the purpose of electing Germany to the League.

⁶ The Covenant, art. 3, paragraph 3.

⁷ The Permanent Mandates Commission is, with the exception of the Advisory Committee on the Reduction of Armaments (The Covenant art. 9) the only other commission provided for by the Covenant.

⁸ Covenant, art. 22, paragraph 9.

League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League." The Mandatory is thus forced to recognize, in such cases, the jurisdiction of the Permanent Court of International Justice. The Court, however, assumes jurisdiction only after every other means of adjudication has been exhausted. From a recent judgment given by the Court in a case between a Mandatory and another Member of the League it would seem that the majority of the Court are of the opinion that its jurisdiction lies only in exceptional cases.⁹

From the very beginning there arose a dispute as to the relative powers of the Assembly and the Council and their relation to one another. Lord Balfour in his report on this question rightly said that their functions not only overlap, but, in most important respects, are absolutely identical.¹⁰ Of course, such a situation was pregnant with grave possibilities for friction or controversy. In order to avoid clashes from occurring it was necessary to lay down in legal

⁹ See Publication of the Permanent Court of International Justice, Collection of Judgments Series A, No. 11, Case 2, the readaptation of the Mavrommatis Jerusalem Concession (Jurisdiction). See also an article by Norman Bentwich, "The Jurisdiction of the International Court of Justice over concessions in Mandated Territories," *Law Quarterly Review*, October, 1928, pp. 450-464.

¹⁰ Records of the First Assembly, Meetings of the Committee, I, (Constitutional questions) Annex 4, p. 94.

terms what was to be the relation between the two bodies. The Secretary-General of the League has defined this relation in a legal statement and similar statements have been made by the Assembly and the Council.¹¹ Of importance to us is the statement that "whenever authority is expressly given to the Council, the Assembly will have no power to undertake on its own initiative that part of the work."¹² Mentioning the mandates specifically, the report states that the Council will define the conditions of the mandates if not previously agreed upon.¹³

It is necessary to note that Article 22 does not name specifically either the Council or the Assembly. It was only by going back to the general spirit of the Article and by determining the intentions of its framers that the dispute was settled in favor of the Council. The proposition that the Assembly should have the full authority not only to distribute the mandates but to control their operation, was argued by the German Government in a Memorandum distributed to the members of the Assembly.¹⁴ The

¹¹ Legal Statement of the Competence of the Council and the Assembly of the League of Nations, respectively, as stipulated in the Covenant and in the Treaties. *Ibid.*, pp. 90-98. See also the Records of the First Assembly for the debates on this subject, pp. 712-725.

¹² *Ibid.*, p. 90.

¹³ *Ibid.*, p. 91.

¹⁴ See Records of the First Assembly Plenary Sessions Annex to the tenth meeting. According to Miller, President Wilson suggested that control over mandatory administration should be exercised by the Assembly and by majority vote. See Miller, II, 89-90.

argument was that the phrase "Members of the League" used in paragraph 8 of Article 22 could mean no other body than the Assembly which alone represents all the Members of the League. The Council did not find it necessary officially to answer this Memorandum; Hymans in his Report which will soon be discussed, declared, however, that the phrase "Members of the League," meant the signatories of the Versailles Treaty. For at the time the Covenant was drafted it was supposed that the provisions dealing with the mandates would be included in the body of the treaty or as annexes to it.¹⁵

The dispute between the Council and the Assembly as to their respective relation to the mandates did not, however end with the acceptance of the above mentioned report. It needed another heated debate finally to settle the predominance of the Council over the Assembly in the matter of mandates. This discussion arose when Lord Robert Cecil, representing the Union of South Africa in the First Assembly and serving as Rapporteur for its 6th Committee,¹⁶ reported to a plenary session, and a heated debate developed between him and Mr. Balfour, represent-

¹⁵ See Assembly Doc. 161, Annex 4, p. 16.

¹⁶ The actual work of the Assembly is done through six main Committees. The first Committee deals with constitutional and legal questions; the second Committee with technical organizations; the third Committee with reduction of armaments; the fourth Committee with financial questions; the fifth Committee with social and general questions; and the sixth Committee with political questions (including mandates). Robert Jones and S. S. Sherman, *The League of Nations*, p. 117.

ing the British Empire. In this report the recommendations were: (1) That no member of the Permanent Mandates Commission should be dismissed without the assent of the majority of the Assembly, (2) That there should be at least one woman on the Commission, and (3) That the governments of territories subject or about to be subjected to the reign of the mandates should report to the Permanent Mandates Commission as to what had been done by them in their territories prior to the issuance of the mandate.¹⁷ The words in which these recommendations were clothed created the impression that the Assembly thought itself responsible for the observance of the mandates. Mr. Balfour claimed that what the framers of the Covenant intended to express was rather that the whole responsibility for the observance of the mandates should rest with the Council, and he made it clear to the Assembly that the Council was under no obligation to heed any recommendation or resolution of the Assembly unless it should choose to do so. This debate took place in December, 1920, and, since then, it has so worked out in practice that, although the Assembly is free to discuss and examine any question relating to the mandates, its influence is of secondary importance. The whole responsibility for the observance of the terms of the mandates lies with the smaller body. The Council in

¹⁷ These territories were, at the time, for the most part under military government.

most cases, however, has acted upon recommendations proposed by the Assembly.¹⁸

We now come to discuss the Permanent Mandates Commission which, though only an advisory commission, in actual practice has exerted a great influence upon the development of the mandatory institution.¹⁹

The last paragraph of Article 22 reads: "A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories, and to advise the Council on all matters relating to the observance of the Mandates." In practice, the Commission, though lacking any executive powers, exercises greater authority, and enjoys a wider influence, than the words of the Article would seem to warrant. The calibre of its members—most of whom are experts in colonial government and former officials of their respective countries—and their point of view—one of conscientious responsibility, and an eager will to serve, could not but place them in high esteem and influence.

The Mandates Commission does not consider itself to be a legal body created for the purpose of giving

¹⁸ At each session of the Assembly the Council sends to it a Report on what it has accomplished during the past year, among other things mentioning also some observations on the mandates. Oftentimes the Council asks the Assembly to give its opinion on some specific suggestions.

¹⁹ The best account of the work of the Mandates Commission and its share in the supervision of the Mandates is to be found in a book written by Dr. F. W. Van Rees, Vice-Chairman of the Commission, *Les Mandates Internationaux*, 1927.

opinions for the use of the Council on questions of interpretations before those questions have ever arisen in practice. Nor is it a committee of control, whose duty it is to supervise the application of the provisions of the mandates.²⁰ The Permanent Mandates Commission, rather, views itself as a technical body, not a political body. Its functions are the following: (1) It examines the annual reports sent by the mandatory Powers to the Council. This examination includes questioning of the accredited representatives, which the mandatory State sends to the sessions of the Mandates Commission when its annual report is being examined; (2) It receives petitions from inhabitants of mandated territories, as well as from other sources with regard to alleged failures by any mandatory Power to act in conformity with the provisions of its mandate; (3) It discusses questions of general interest to the mandatory institutions, as they arise. As has been said by the Vice-Chairman of the Commission: "The study of such questions by the Mandates Commission, with the object of gradually and methodically establishing for its own use what, in my opinion, would constitute its jurisprudence, seems to me to be not only of great value but really indispensable for its work in general and particularly for its discussions with the accredited representatives of the mandatory Powers."²¹ The Commission often

²⁰ Minutes of the Mandates Commission, Ninth session, p. 133.

²¹ Annex 4 to the Minutes of the Seventh Session of the Permanent Mandates Commission, p. 152.

formulates recommendations to the Council which, in almost all cases, are passed by the Council.²²

The original members of the Mandates' Commission numbered nine. In September, 1927, a German subject was added. In addition to these there is at present an extraordinary member. This extraordinary member is Professor William Rappard who had previously served as Director of the Mandates Section of the Secretariat of the League of Nations. On resigning from that position he was appointed by the Council, on the advice of the Commission, as an extraordinary member. The International Labor Office is entitled to send a representative who attends the sessions in an advisory capacity solely. The Constitution of the Mandates Commission was approved by the Council on December 1, 1920.²³

The final distribution and definition of the mandates was delayed for a long time after the mandatory principle had been accepted. As a result, the mandatory Powers and the general public were ignorant as to what the mandatory system would eventually come to mean. It was only as late as August, 1920, when the Council of the League met at St. Sebastian, in Spain, that a report was presented and adopted dealing with the responsibilities im-

²² Such were, for example, the recommendations of the Mandates Commission of the question of nationality of the inhabitants of mandated territories, and others, which will be discussed later in this study.

²³ For text of the Constitution of the Permanent Mandates Commission see Assembly Doc. 161, Annex 14.

posed upon the League by Article 22. This important report was presented by M. Paul Hymans, the Belgian member on the Council.²⁴

The Report²⁵ states that the following action should be taken: (1) That the mandatory Powers be carefully chosen;²⁶ (2) That the frontiers of the territories be delimited;²⁷ (3) That the mandatory Powers chosen be invested with the authority and the necessary powers by means of instruments which would bind them legally; (4) That these instruments should involve the application of the principle laid down in paragraphs four, five and six of Article 22, and should vary according to the nature of the people that were to come under them; (5) That the body provided for by Article 22 to help ensure the observance of the mandate be created.

In practice, the distribution of the mandates was as follows. The Supreme Council, composed solely of representatives of the Principal Allied and Associated Powers, allocated the mandates and notified the Council of the League to that effect. The Council

²⁴ See Assembly Doc. 161, Report by the Council to the Assembly on the responsibilities of the League arising out of Article 22 and annexes.

²⁵ *Ibid.*, Annex 4.

²⁶ At the time this report was delivered all the mandatories were already selected by the Supreme Council and were already administering the respective territories.

²⁷ There were a number of disputes with regards to boundaries of some of the mandated territories even after they were once defined. The most important was as to the Province of Mosul in Mesopotamia. The boundary between the British and the Belgian mandate in East Africa and the boundaries between the British and the French mandates in West Africa were changed subsequent to their creation.

of the League took official cognizance of this allocation and informed the respective Powers appointed by the Supreme Council that, in the eyes of the Council, they were designated as mandatories, and, at the same time, notified them of the terms of the mandates.

The actual framing of the mandate charters Hyman proposed to leave to the respective mandatory Powers.²⁸ They had, however, to be written in the spirit of Article 22. If found by the Council to be so written, that body would then approve them. Only in case the mandatory Power failed to indicate the terms of its mandate would the Council take the matter in its own hands and itself write the mandate.²⁹

With regards to the Mandates Commission, the report proposed that each Mandatory should have one member on the Commission, the Commission to be so composed, however, that the majority of the members would be from non-mandatory powers. All the members were to be appointed by the Council on a basis of merit and personal fitness for the work.

With the adoption of the Hyman's Report by the Council there ended an important phase in the establishment of the Mandates System. The coming into force of many of the mandates was, however, delayed by a number of considerations, not dependent upon either the mandatory Power or the Council. The

²⁸ A committee headed by Lord Milner was appointed to prepare the draft mandates. See Temperley, VI, 506.

²⁹ Such an occasion, however, did not arise. The Council did not write out the terms of any mandate, although it amended some.

definition of the A and B mandates was delayed on account of the intervention of the United States. The United States sent its objections to the immediate ratification of the A and B Mandates in a note addressed to the Council of the League.³⁰ In this note the United States claimed that its assent as one of the Principal Allied and Associated Powers was necessary to the confirmation of any mandate and that the approval by the United States was essential to the validity of any determination which might be reached respecting the mandates.³¹ The objection of the United States to the ratification was chiefly to the San-Remo Oil agreement between France and Great Britain of April, 1920.³² Once

³⁰ *The Official Journal*, March-April, 1927, p. 137.

³¹ The "C" Mandates were confirmed by the Council in December, 1920. This note reached the Council in February, 1921, so that the "C" Mandates came into legal force without the assent of the United States. See Correspondence between the United States and Great Britain respecting economic right in Mandated Territories. International Conciliation No. 166 (1921) and No. 213 (1925). In the separate Peace Treaty between the United States and Germany, the United States Government reserved for itself and its nationals "any and all rights, privileges, indemnities, reparations or advantages, together with the rights to enforce the same to which it or they have become entitled under the terms of the armistice of November 11, 1918, or any extension or modification thereof, as well as all the rights and privileges as one of the Principal Allied and Associated Powers."

³² According to this agreement Great Britain and France were to work in cooperation in those countries where the oil interests of the two nations can be usefully united. Article 7 of this agreement decided that Great Britain shall grant to the French Government or its nominee 25% of the net output of crude oil at current market rates, keeping the rest for herself. For text of the agreement see International Conciliations, No. 166, Sept., 1921, V.

having adopted the principle that the United States should enjoy any and all the privileges in the territories taken from the former enemy, the United States extended it to the rest of the yet non-ratified mandates.³³ Eventually, however, all mandates³⁴ were duly ratified and legal stability established. The delay, however, caused in many territories, notably in the A mandated territories, many inconveniences and even great disturbances, the evil effects of which have not wholly disappeared yet.³⁵

³³ See *Mandate for Palestine*, prepared by the Division of the Near Eastern Affairs, United States Printing Office, 1927. There were other minor objections to the immediate ratification of the mandates. See the following two chapters dealing with the respective territories.

³⁴ The Mandate for Iraq was never ratified. (For the peculiar status of this territory see ch. vii). Great Britain thought it desirable that their obligations vis-a-vis the League could be most effectively discharged if the principles on which they rest are embodied in a treaty to be concluded between His Majesty's Government and the King of Iraq. See *Official Journal of League of Nations*, Dec., 1921, p. 1215.

³⁵ Following is the list of the mandated territories and their respective Mandatories:

(1) A Mandates:

Iraq or Mesopotamia.....	Great Britain.
Syria and Lebanon.....	France.
Palestine and Transjor-	
dania	Great Britain.

(2) B Mandates:

Tanganyika	Great Britain.
Ruanda-Urundi	Belgium.
British Togo.....	Great Britain.
French Togo.....	France.
British Cameroons.....	Great Britain.
French Cameroons.....	France.

In practice, then, the mandated territories are governed by a mandatory Power on behalf of the League, and no outside body, not even the Council itself, has any direct connection with the mandated peoples. On the whole, these territories are governed in the manner in which its colonial possessions are respectively governed by each Power. There are, however, a few differences, required by the spirit of Article 22 and the more specific provisions of the particular mandates. Some of these differences which pertain to the subject of this chapter may be pointed out.

The mandatory Power is required to render an annual report to the Council. These reports, which by the style in which they are written reflect the nationality of their authors, give an account of how the territory under consideration fared generally during the past year. They also recite the measures taken by the Mandatory in order to carry out the specific provisions of the mandate. The Mandates Commission, always ready to lighten the work of the Mandatory, but never at the expense of the mandated territories, has prepared questionnaires for the B and C mandates considered as two separate classes and for each of the A mandates. These questionnaires, if properly filled out, it was believed,

(3) C Mandates:

South West Africa.....	Union of South Africa.
Western Samoa.....	New Zealand.
South Sea Islands.....	Japan.
New Guinea.....	Australia.
Nauru	British Empire.

would give to the Mandates Commission the information needed to enable it to fulfill conscientiously its duties. The annual reports are sent to the Council, but it is the Mandates Commission upon which is imposed the duty of studying and examining them. This examination takes place in the presence of an accredited representative of the Mandatory who is at the disposal of the members of the Commission to elucidate passages of the report that may need supplementary explanation, as well as to furnish any further information that may be demanded by the Commission.³⁶

The Mandates Commission, according to a provision in its constitution, before it was later amended, was to meet once a year. However, the amount of work before the Commission grew to an extent that made necessary another session.³⁷ Each member, in addition to making himself familiar with the contents of all the reports, specializes in one particular field of mandatory administration. This method, besides saving time for the members of the Commission, gives to the questions and observations of each member a particular value.³⁸ The report which the Com-

³⁶ The value of these examinations may be drawn from the fact that in almost all cases the Mandatories send to the Commission the best men available; very often Governors or High Commissioners of the territories appear before the Commission.

³⁷ For the Rules of Procedure of the Mandates Commission, see League of Nations Doc. C.P.M. 8 (1) VI 1921.

³⁸ When dividing the subject among the members of the Commission the interest of each member and his past experience was especially taken into account. Thus: Sir F. Lugard, a former ad-

mission renders to the Council of its work during a particular session contains general and particular observations on the reports of the territories examined. In addition to these observations the Mandates Commission usually has some recommendations dealing with various phases of mandatory administration upon which it invites the Council to act.³⁹ Before, however, delivering the report to the Council, the Commission sends its observations on each report to each accredited representative, who is entitled to attach to it any comments which he desires to make. These comments then go with the report to the Council.⁴⁰

The chairman of the Mandates Commission, and, in case he is not able to be present, the Vice-chairman, represents the Commission at the meeting of the Council when the mandates are considered. The Council has a special Rapporteur on Mandates who formulates its resolutions. The Council seldom takes exception to any of the conclusions and recommendations of the Commission. However, it does not take immediate action upon proposals coming from the Commission which demand radical changes in the

ministrator in Africa, has charge of the sections dealing with spirituous liquors and drugs, judicial matters, and sections dealing with the moral, social and material welfare of the natives; Mr. M. P. Orts, a former Secretary General of the Department of Foreign Affairs of Belgium has charge of the sections dealing with economic equality.

³⁹ Of great help to the Mandates Commission is the Mandates Section of the Secretariat of the League of Nations which, besides doing all secretarial work for the Commission, furnishes it with a variety of documents pertaining to the mandate question.

⁴⁰ Rule 8 of the Rules of Procedure.

procedure of its work or in the extension of its powers. In such cases, the Council demands the opinion of the mandatory Powers before it takes final action. Thus, for example, when the Commission found it necessary, in the light of its experience, to revise the questionnaire for the B and C Mandated territories, the Council instructed the Secretary General to forward copies of the revised questionnaire to the mandatory Powers with the request that they should forward, for the information of the Council, any observations that they might desire to make on this subject.⁴¹

More typical than any other feature of the mandates system is the right of petition which the inhabitants of the mandated territories possess, and which to them is the most effective guarantee against oppression and misgovernment. The idea that the inhabitants should possess such a right was first mentioned at the initial session of the Mandates Commission. Mr. William Rappard, then the head of the

⁴¹ Official Journal October, 1926, p. 1239. Before demanding the opinion of the Mandatory on the revised questionnaire the Council itself debated the question. It was then that the first conflict between the Mandates Commission and the mandatory Powers, members of the Council, took place. Sir Austen Chamberlain, British member of the Council, went so far in the criticism of the Mandates Commission as to say that it seemed to him that "there was a tendency on the part of the Commission to extend its authority to a point where the government would no longer be vested in the mandatory Powers but in the Mandates Commission." Ibid., p. 1233. Another cause for the sudden outburst of Mr. Chamberlain was the matter of hearing petitioners on which the Mandates Commission invited the Council to voice its opinion.

Mandates Section of the Secretariat of the League, received a number of documents of various descriptions addressed to the Mandates Commission. Most of them were complaints either against certain provisions of some of the mandates or against acts of a particular mandatory. Mr. Rappard did not know how to deal with such material as there was no provision either in the Covenant itself or in the mandate charters respecting petitions or complaints. At that time—October, 1921—there was doubt whether it was within the competence of the Commission to take official cognizance of such documents at all.⁴² Later, in July, 1922, the British Government recognized the right of petition and itself proposed to the Council to formulate rules of procedure which the petitioners would be expected to follow.⁴³ Such a procedure was thought to be indispensable, for, though this right was essential to the effective working of the system, it could be abused by injudicious application. The procedure was adopted after a long study and discussion by the Assembly, the Council, and the Permanent Mandates Commission in the form of a resolution passed by the Council.⁴⁴ In essence, the resolution was as follows: The inhabitants, though given the right of petition as being in

⁴² Minutes of the First Session of the Permanent Mandates Commission, p. 28.

⁴³ See *Official Journal* of the League of Nations, March, 1922, pp. 200-201, 211.

⁴⁴ *Ibid.*, Annex 457, Procedure in Respect of Petitions regarding Inhabitants of Mandated Territories.

agreement with the spirit and principles of the Covenant, are not allowed to address their complaints directly to the Mandates Commission. Their complaints must be sent through the mandatory Power who is thus afforded the opportunity to add any comments it may find desirable. Thus, in considering the petition, the Mandates Commission will have at the same time the views and explanations of the Mandatory.⁴⁵ Petitions that have reached the Permanent Mandates Commission otherwise than through the mandatory Power are returned to the signatories with the direction to resubmit them through the proper channels.

Petitions may emanate from sources other than the inhabitants of the mandated territories. For petitions of this kind it is provided that they shall be sent to the Chairman of the Mandates Commission who will decide, "by reason of the nature of their contents or the authority or disinterestedness of their authors," which petitions deserve consideration. If the chairman regards a petition as important, he is to send it to the mandatory Powers of whose action the petition complains. The mandatory Power is expected to answer this petition within a period not exceeding six months.

⁴⁵ In a note prepared by Sir F. Lugard, further restriction against the right of petition was offered. "Any complaints that are justiciable in the courts of the territory will not be considered by the Commission." See Minutes of the Fourth session of the Permanent Mandates Commission, Annex 6. The Mandates Commission serving only in an advisory capacity cannot, of course, consider protests against provisions of the mandates, or other political questions.

Although the matter of petition has proved to be a great help to the inhabitants of mandated territories, and has in a number of cases prevented certain wrongs to them,⁴⁶ it is doubtful whether it has fully accomplished the aims set for it. Thus, hardly any complaints come to the Commission from the natives in Africa who are mostly unable to read or write. Another illustration of the only partial success of the right of petition is that in Syria where, it would seem, the population has the greatest number of grievances against the Mandatory, hardly any petitions come to the Mandates Commission directly from the inhabitants.⁴⁷ The petitions mostly emanate from politicians in Cairo and elsewhere whose political ambitions thrive on disorder in Syria. This, and other considerations, have caused the members of the Commission to believe that the inhabitants of the mandated territories should be afforded additional facilities for bringing their views before it. One way to accomplish this purpose would be for members of the Commission to visit certain territories and to acquaint themselves at first hand with conditions there. In many cases they have been invited by petitioners to visit their territories.⁴⁸ Such a procedure,

⁴⁶ Thus the boundary line in East Africa between the respective territories of Great Britain and Belgium was adjusted for the benefit of some local tribes through the exertion of the Mandates Commission aroused by a petition sent to it by local resident missionaries. See Annexes 8 and 9 in the Minutes of the Mandates Commission, second session.

⁴⁷ See Minutes of the Permanent Mandates Commission, Eighth session, p. 165.

⁴⁸ *Ibid.*, Seventh session, Annex 7B.

besides the great expense involved, would greatly change the character of the Commission from what it was expected to be.⁴⁹ The Commission has sounded the views of the Council on a proposition that, in exceptional cases, petitioners should be allowed to appear before the Commission or before a committee thereof and orally inform them of their grievances.⁵⁰

The matter of hearing petitioners, more than the revised questionnaire, has aroused the protests of the Mandatories. They were unanimous in their opposition to the proposition that the Mandates Commission should be authorized to give petitioners an oral hearing. The Commission, which was fully aware of the delicacy of such a procedure, and, if given such authority, would presumably have used it in such a manner that the dignity and prestige of the mandatory Powers would not be affected, was thus given an undeserved rebuke.

Yet, indirectly, the meeting of petitioners with members of the Commission in their unofficial ca-

⁴⁹ That such a visit may be a help to members of the Council in their work was proven by Professor William Rappard who after having visited Palestine in the spring of 1925 completely changed his views about the situation there. See Minutes of the Seventh Session of the Mandates Commission, p. 127.

⁵⁰ See Minutes of the Mandates Commission, Ninth Session, Annex 9, p. 216. Before putting this recommendation before the Council the members of the Commission debated the question during a number of its sessions. There was quite a difference of opinion between the members as to the competence of the Commission in the matter of jurisdiction. See especially Minutes of the Sixth, Seventh and Eighth Sessions.

capacity cannot be avoided. Many individuals and committees of various organizations come to Geneva for this very purpose. It would seem, therefore, that it would be best for all interests concerned to allow the Commission the right personally to interview petitioners when, in their opinion, there is need for such a procedure. The revised questionnaire, with its long list of detailed questions, which the Commission desired the Mandatories to answer in writing their annual reports, at first met with great opposition, yet in practice the Mandatories supply the Commission much of the information it asks for.

In the final analysis the actual supervision over the administration of the mandated territories is exercised by the Mandates Commission, which is thus substantially an organ of control. One cannot read the Minutes of the sessions without seeing how effectively its work is done. The Commission has taken as a guide in its work the following declaration by the Council that "it—the Council—interprets the duties in this connection—the supervision over mandatory administration—in the widest sense. Nevertheless, the League will obviously have to display extreme prudence so that the exercise of its rights of control should not in any way increase the difficulty of the task undertaken by the Mandatory Powers."⁵¹ The Mandates Commission follows both directions in a sincere, conscientious, and able manner.

⁵¹ Assembly Doc. 161, p. 3.

With the supervision by the League of the administration in mandated territories already outlined we are now able to turn our attention to the terms and provisions of the mandates the execution of which the League supervises. We shall start with the B and C mandated areas because their administration is less intricate than that of the territories in the A category.

CHAPTER VI

THE B AND C MANDATES

Article 22 distinguishes between three classes of mandated territories, respectively named the A, B and C mandates. Although the article speaks of all the territories as being inhabited by peoples "not yet able to govern themselves under the strenuous conditions of the modern world,"¹ it differentiates between three stages of development enjoyed by the various inhabitants. However, other factors beside the grade of civilization of the territories were considered when the division of the territories into respective categories was undertaken. There were the geographical situations of the territories, their economic conditions, and "other similar circumstances."²

Article 22 speaks first of "certain communities formerly belonging to the Turkish Empire that have reached a stage of development where their existence as independent nations can be provisionally recognized, subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone."³ The peoples of Central Africa are at such a stage of their civilization that the Mandatory must be responsible for the administration of the territory, subject to certain

¹ Article 22, paragraph 1.

² Ibid., paragraph 3.

³ Ibid., paragraph 4.

conditions.⁴ Lastly there are territories which, either because sparsely populated, of small size, remote from the centre of civilization, or contiguous to the territory of the Mandatory, or because of other circumstances, "can best be administered under the Law of the Mandatory as integral parts of its territory subject to certain safeguards in the interest of the indigenous population."⁵

At first sight, it would seem that this division of territories was a logical one, and that the extent of the powers of administration possessed by the Mandatory and the duties imposed on it would be in accordance with the class of territory it ruled. Each territory, it was to be expected, would be administered more or less like another territory of its own category, so as to justify the classification and be in harmony with it. However, on examining in detail the kind of territories that fall in the respective classes one comes to the conclusion that there must have been other factors besides those specifically mentioned in Article 22 that forced certain territories into a class to which they would otherwise not be expected to belong. The people of Transjordan, or East Palestine, are in a stage of development similar to that of the tribes of Africa; their territory is sparsely populated, and as far as their habits

⁴ Ibid., paragraph 5.

⁵ Ibid., paragraph 6. It is worthy noticing that when speaking of the A mandated territories the term "communities" is used. The inhabitants of the B mandated territories are called peoples, and in connection with the C mandated territories the term territories is used.

of life and their adaptability to modern civilized life are concerned, they are as remote from centres of civilization as South West Africa or Samoa. And yet Transjordan is not in the B or C class of mandated territories, but in the A class.⁶

More than any other cause that explained why the C mandates should be governed as integral parts of the Mandatory's territory was undoubtedly the fact that the British Dominions, which knew well in advance that they would be appointed to govern these territories, and in actuality already administered them, would have opposed any other arrangement. In order to win over the Dominions to the acceptance of the mandates system at all they had to be given enough concessions to make their administration of these territories as near annexation as possible.⁷ In the light of these and other political considerations, some inconsistencies would be expected to be met with in each of the respective categories. And of these there are a number, especially in the A group of mandates, a fact which makes the division more elastic and less stringent than it would seem to be.

Before entering into a detailed discussion of the attributes of each group of mandates and their peculiar features, one thing has first to be ascertained. Do the same principles underlie all the three

⁶ For a more detailed discussion of Transjordan and the other A mandated territories see ch. vii, below.

⁷ The Dominions claimed these territories by right of conquest, and only reluctantly, after a continued exchange of threats, was a compromise finally reached. See ch. ii, above, and references there mentioned.

categories, or are these principles different as to each class? This question has already been partly answered, but it is of sufficient importance to need further consideration at this place. It can hardly be over-emphasized that the concepts of trust, guardianship, and mandate are at the basis of all the mandates, irrespective of what class a territory may belong to. In other words, no matter how limited may be the powers of a Mandatory in a territory of the A group, or how wide they may be in a territory of the C group, they are both applications of one and the same idea.⁸ This means, for example, that legally, when such a concept as sovereignty is involved, they all offer the same problem. The differences between them are differences of degree and not of kind.

The most complicated group of mandates, from the point of view of administration and responsibility, are beyond doubt the A territories which all formerly belonged to the Ottoman Empire. They will be discussed in the next chapter. On the other hand, the B and C mandates possess many similarities, so that allowing for some differences to be pointed out, they can be treated together.⁹

⁸ Article 22, as was already remarked, was vaguely written, and any provision could be interpreted in more ways than one. Paragraph 3 of the same article reads as follows: "The character of the Mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances." The phraseology leaves enough latitude for various, even conflicting, interpretations.

⁹ Of the total of fourteen mandates three belong to the A, six to the B and five to the C groups. For a list of the mandates and their Mandatories see above, ch. v, Note 34.

The main difference between the B and C groups of territories are in their general administration and in the application of the equal opportunity and open-door clauses.¹⁰ The mandate charters for the C group contain only seven articles and add hardly anything to the provisions of Article 22 of the Covenant. Article 2 of the mandate for South West Africa reads as follows: "The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Union of South Africa, and may apply the laws of the Union of South Africa, subject to such local modifications as circumstances may require."¹¹

A peculiar case in the C group is the Island of Nauru with a total area of only twelve square miles, but which is important because of its phosphate deposits. The Mandatory for this territory is not Great Britain or one of the Dominions of the British Em-

¹⁰ In a paper read by Mr. Leonard Woolf before the International Law Association during its 29th Conference, at Portsmouth, England, the speaker puts down the C Mandates as a mere subdivision of the B class, and thus differentiates only between two classes of mandates. See International Law Association, Report of the Portsmouth Conference, "Scope of the Mandates under the League of Nations," p. 137. But one can hardly agree with such a proposition. For, as will be soon pointed out, the differences between them are more than superficial. In fact, Mr. Woolf himself, later in his paper, declares as follows: "But it is impossible to ignore the fact that the practical result of the two groups will probably be very different." Ibid., p. 138.

¹¹ This article is typical of the rest of the groups. The text of all the mandate charters may be found in the *Official Journal of the League of Nations* for January-February, 1921, for the C Mandates, and August, 1922, for the rest. Also supplement to the *American Journal of International Law*, 1923, XVII. See Appendices to this study.

pire, but the British Empire as a unit. Obviously, it was not practicable that the Island should be administered by the British Empire which has become, in fact, a minor League of Nations. It was therefore decided by the Delegation of the British Empire to the Peace Conference at Versailles that Australia and New Zealand, owing to their geographical position, were obviously best fitted to administer the Island. The administration of this Island was therefore vested in the Governments of these two Dominions, together with the United Kingdom. These three Governments act on behalf of and are responsible to the British Empire upon whom the mandate was conferred.¹² The Governments of the United Kingdom, Australia and New Zealand agreed between themselves on the second of July, 1919, that the administration of the Island should be vested in an administrator. The first administrator should be appointed for a term of five years by the Australian Government, and thereafter the administrator should be appointed in such manner as the three Governments might decide.¹³ A second administrator has since been appointed, this time also by the Australian Government.¹⁴ This multiplicity of delegation in no

¹² See Comments on the Observations of the Permanent Mandates Commission by the Accredited Representatives of the Commonwealth of Australia and of Japan. League of Nations Doc. A 37, 1922, VI.

¹³ For the full text of the agreement see Report on the Administration of Nauru during the year 1923, Appendix F, p. 40.

¹⁴ See Appendix G to the Report on the administration of Nauru for the year 1922; also Minutes of the Permanent Mandates Commission, 11th Session, pp. 18-19.

way affects the powers and responsibilities of the Mandatory Power, which is the British Empire. Thus, though it is the Commonwealth of Australia, the *de facto* administrator of Nauru, that renders the annual report to the Council, the report is forwarded under a covering letter from the British Foreign Office.¹⁵

The grant of powers to Mandatories over B territories does not differ from that over the C territories. The Mandatories are in all cases given full powers of legislation and administration. British Togo, Ruanda-Urundi, and British Cameroons, all territories of the second category, are governed as integral parts of the territory of the Mandatory Power. The reason why these B territories are allowed to be administered as integral parts of territories of the Mandatories is because in all these cases the Mandated territories form small areas contiguous to much larger colonies of the Mandatories. A separate administration would involve great difficulties and would unnecessarily duplicate many administrative functions. The other territories of the B class are governed as territories by themselves. But, even in their case, the mandate-charter provides that "the Mandatory shall be authorized to constitute the territory into a custom, fiscal and administrative union or federation with the adjacent territories under its own sovereignty or control."

¹⁵ See Minutes of the Permanent Mandates Commission, 9th session, p. 14.

Although the administration in the B and C categories may look similar, in fact they are not so. There are a number of provisions in the mandate-charters for the B territories which are not to be found in the C mandates. Similar provisions are styled differently in the respective mandates so as to augment the responsibilities of B Mandatories or limit their powers. Thus, Article 4 of the British Mandate for the Cameroons, a B mandated territory, reads as follows:

The Mandatory;

(1) Shall provide for the eventual emancipation of all slaves, and for as speedy an elimination of domestic and other slavery as social conditions will allow;

(2) Shall suppress all forms of slave-trade;

(3) Shall prohibit all forms of forced or compulsory labor, except for essential public works and services, and then only in return for adequate remuneration;

(4) Shall protect the natives from abuse and measures of fraud and force by the careful supervision of labor contracts and the scrutiny of labor;

(5) Shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors.

The corresponding article in the Mandate for Nauru, a C Mandated area, reads as follows:

The Mandatory shall see that the slave trade is prohibited and that no forced labor is permitted except for essential public works and services, and then only for adequate remuneration:

The Mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with analogous rules laid down in the Convention relating to the control of arms

traffic, signed on September 10, 1919, or in any Convention amending the same:

The supply of intoxicating spirits and beverages to the natives shall be prohibited.

The most important difference between the B and C Mandates is the absence in the C mandated territories of the provision for the open door and equal opportunity. Paragraph 5 of Article 22 which deals with the B territories ends as follows: "and will also secure equal opportunities for the trade and commerce of other members of the League." The Mandatories in C territories, however, are bound only by such safeguards as are "in the interests of the indigenous population."

The mandates for the B territories contain, therefore, a number of provisions dealing with economic equality. In each mandate a full article is devoted to this subject.¹⁶ This Article provides that nationals of States, Members of the League of Nations, should enjoy equally with the nationals of the mandatory Power the right of entry and residence in the territory, protection of person and property, the acquisition of all kinds of property and the exercise of their profession and trade, freedom of transit and navigation, and complete economic, commercial and industrial equality. Concessions, not bearing the character of a monopoly, which, with certain qualifications, are totally prohibited, are to be granted

¹⁶ See Article 7 of the British and Belgian Mandates in East Africa and Article 6 of the rest of the mandates.

without distinction to the nationals of all the States, Members of the League.

All these very important provisions are absent from the C mandates in spite of efforts by the Governments of the United States and Japan to have the open-door doctrine and the equal opportunity clause apply also to them.¹⁷ The United States, however, gained special privileges in the Isle of Yap, an Island of considerable strategic importance, situated in the Pacific Ocean between Guam and the Philippine Islands. The Island of Yap is one of the numerous islands administered by the Japanese Government as a C mandate. It is an important center for cable communications. When the question of the Pacific Islands was brought before the Council of Four, President Wilson made a reservation with regards to this minute Island, which he considered should be internationalized.¹⁸ The Japanese Government, through Baron Makino, opposed such a scheme. The controversy was finally settled by a special treaty concluded between the United States and Japan at the time of the Washington Conference of

¹⁷ The protests of the United States Government arrived too late to be considered before the ratification of the C Mandates which took place on December 17, 1920. It was, therefore, the Japanese Government which mainly fought for the inclusion of the equal opportunity clause. Especially obnoxious to the Japanese Government was the fact that Japanese subjects would be open to discriminatory and disadvantageous treatment in the mandated territories of the British Dominions. See the Declaration by the Japanese Government relating to C Mandates, *Official Journal*, January-February, 1921, p. 95.

¹⁸ See Baker, II, 247.

1921-1922. According to this convention, the United States gave its sanction to this mandate.¹⁹ The treaty further provides that the United States and its nationals shall enjoy all rights and privileges granted to Members of the League of Nations, notwithstanding the fact that the United States is not a member of the League.²⁰ Article 3 of the Agreement refers specifically to the Island of Yap. It reads: "The United States and its nationals shall have free access to the Island of Yap on a footing of entire equality with Japan or any other nation and their respective nationals in all that relates to the landing and operation of the existing Yap-Guam cable or of any cable which may hereafter be laid or operated by the United States or by its nationals connecting with the Island of Yap." Later articles extend the right of economic equality of the United States to other than cable rights. This treaty came after an earlier Treaty entered into by the United States, the British Empire, France and Japan relative to their Insular Possessions and Insular Dominions in the Pacific Ocean, and changed partly some of its terms.²¹

The things that the B and C mandated territories have in common are the safeguards put into their

¹⁹ The text of the Yap Treaty is to be found in the League of Nations Treaty Series, 1922, XII, No. 311.

²⁰ The only field wherein Members of the League enjoy any privilege in C Mandates is the provision with regards to missionaries, Article 5 of these mandates reading partly, "and shall allow all missionaries, nationals of any State, Member of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling."

²¹ For the text of these treaties see *Ibid.*, XXV, Nos. 607-608.

mandates in the interest of the native population.²² There are, however, certain differences which will be discussed under the following headings: General Administration; Moral and Material Welfare; Slavery and Labor; Traffic in Liquors and Arms; Military Organization and Defence; Land Tenure; Finance; State Enterprise; Frontiers; Loans, Advances and the Investment of Public and Private Capital; Application of Special Conventions; Education and Liberty of Conscience.

The administration of backward areas is a difficult task which challenges the ingenuity and moral integrity of modern civilization. With the best of intentions on behalf of an administrator and his staff there are certain barriers to complete mutual understanding and cooperation which seem insurmountable. The differences in race, climate, religion, tradition and general conditions are so great that it requires special talent and patient study even to approximate a true view of the problems that abound.²³

²² A detailed account of the administration of the mandated territories cannot, owing to the character of this study, be given here. The interested reader will find it in the Annual Reports delivered by the respective Mandatories to the Council of the League of Nations, and in the Minutes of the Permanent Mandates Commission. Professor Raymond Leslie Buell has visited and made a thorough study of most of the mandated territories on the African Continent and has incorporated his observations in a work of two volumes, *The Native Problem in Africa*, already referred to earlier in this study.

²³ The problems of administration in Africa, which are typical also of similar territories outside of the African continent, are well discussed in a book by Sir F. D. Lugard, *The Dual Mandate in British Tropical Africa*, already mentioned.

There is, for example, the fundamental question which is at the root of the relations between Western civilization and backward populations, and to which no satisfactory and final answer has yet been given, as to how far the attempt should be carried to bring over Western methods of government and social life into the life of the backward peoples. Assuming that the present methods of government and social system of Europe and America are the best for Europe and America, are they transferable, for example, even with necessary qualifications, to Central Africa? ²⁴

The Colonial policies of civilized nations may be divided into two kinds: (1) The policy of Incorporation; and (2) The policy of Autonomy.²⁵ The first of these policies attempts to combat and destroy all native customs and traditions, and to replace them with the cultures of the colonizing Powers. Such a policy is usually accompanied by direct administration of colonial officials and their direct responsibility to the Colonial Office at home. The policy of incorporation has been followed, in general, by France and Japan in their colonial possessions. Thus, Algeria in North Africa has been made into one of the French departments with representation in the national Parliament. Other French colonies have been given

²⁴ See Benjamin Kidd, *The Control of the Tropics*, where this problem is realistically discussed.

²⁵ See N. E. Buxton and T. P. Conwil-Evans, *Oppressed Peoples and the League of Nations*.

representation in the Chamber of Deputies and the Senate.²⁶

The second policy, that of local autonomy, and indirect administration, is that followed, in general, by Great Britain with regards to her colonial possession. It is in accordance with this policy to encourage local customs and institutions whenever they are not contrary to public morals. Native leaders are supported and are made full use of in the attempt to raise the level of civilization of the lower classes. It was well said by Sir Donald Cameron, Governor of the Tanganyika Territory in East Africa, before the members of the Mandates Commission: "Being convinced that it is neither just nor possible to deny permanently to the natives of the territory any part in the government of the country, the Government of this territory has adopted the policy of native administration, a policy which aims at the elimination of race friction by the provision, within the limits of their own native administration, of legitimate scope for the political interests and aspirations of Africans, both educated and uneducated, so making it possible for them to evolve, in accordance with their traditions and their most deeply-rooted instincts, as an organized and disciplined community with the State, within a State, which, by reason of the widely divergent degrees of civilization and wealth of its component races, does not admit

²⁶ See Buell, *International Relations*, p. 359.

of political evolution, analogous to that of homogeneous nations in Europe and elsewhere in the world.”²⁷

We cannot here make a detailed analysis of the comparative advantages to the natives of these two policies. Colonial experience, on the whole, tends to prove that the policy of autonomy and indirect administration is best liked by the natives. As regards mandated territories it is sufficient to say that they, like the colonies of a mandatory, are governed according to principle of colonial government in which the particular Mandatory believes, so that, in general, the French mandated territories are governed in a way similar to the French colonies, and British mandated territory is governed like a British colony.

The administration of each territory generally gets its powers from a constitutional act from the mandatory Government, which act thus becomes the constitution of the territory. In the mandated territories there is the difference that, in addition to an act by the Central Government of the mandatory Power, there are the mandate charters and the decisions taken by the Council of the League. Any act in the constitution of any such territory, or any local legislation, or the regulations and ordinances by local subdivisions, must be in accordance with the terms of the mandate. Thus the provisions in a mandate take precedence, and each court in a man-

²⁷ Minutes of the 11th Session of the Permanent Mandates Commission, p. 61. Sir Donald quoted this statement from the report on the administration of Tanganyika Territory for 1926, p. 10.

dated territory is empowered to make a decision to this effect.²⁸

Most of the territories under consideration are governed as integral parts of adjacent territories held under full sovereignty by the mandatory Powers. Their distinct character is, however, preserved in a number of ways. Thus, the distinct character of Ruanda-Urundi (as differentiated from the Belgian Congo with which it is administratively incorporated) is brought out by the fact that it enjoys special legislation. A decree relating to the Belgian Congo can enter into force in Ruanda-Urundi only by its acceptance by its governor. And, of course, each mandated territory constitutes a separate financial unit.²⁹

Though not specifically mentioned in the mandate-charters, it was to be expected that one of the most important duties of the Mandatories would be gradually to introduce the natives to the ideas and practices of self-government. That would be entirely in keeping with the concepts of trusts and guardianship as well as with the fundamental idea that the man-

²⁸ See the explanation by Mr. Duchêne, accredited representative of the French Government to the Mandates Commission. Minutes of the Permanent Mandates Commission, 11th Session, pp. 27-28.

²⁹ The Mandates Commission has had a great amount of trouble in stressing this financial separateness of the mandated territories by its continual demand for more information on this subject. This is especially the case in those territories of the B category which are governed as an integral part of another colony of the mandatory Power.

date was to be only a temporary and provisional system of administration. The mandate merely provides that "the Mandatory shall promote to the utmost the material and moral well being of social progress of the inhabitants of the territory subject to its control." Actual participation by the natives in their government, in most cases, now is, and for a considerable time to come will be, out of the question. The inhabitants of some of these territories are at the very bottom of the scale of civilization. But, in almost all cases, native administration of strictly local affairs is left undisturbed unless it is contrary to principles of humanity and the maintenance of social order. In some of the more developed territories there are advisory councils or even legislative assemblies. In Nauru, a C mandated territory, there is an Advisory Council formed by two Europeans appointed by the Administration and two Nauruan chiefs elected by the rest of the chiefs.

The meaning of the phrase "the material and moral well being and social progress of the inhabitants of this territory," which is found in every mandate-charter, was discussed and debated by the members of the Mandates Commission. The problem presented itself as to which of the two should be the more stressed by the Mandatory in its administration of a territory—the economic development of the territory, that is, its material development, or the well being of the inhabitants as viewed from the point of view of moral welfare and social progress. It must be understood that the peoples of Africa are

radically different in many ways from the peoples of Europe and America, and that material development and moral welfare may not go hand in hand. Sir F. Lugard poses the question: How shall the economic development of a territory be reconciled with the moral welfare of its inhabitants? ³⁰ According to him, one of the causes for the decrease of the population of Africa after the coming of the European was "the sudden introduction of an industrial civilization," which required the labor of the natives. But, as these primitives were not used to continuous work, the mortality among them was high. He therefore advises that the Administration, while assisting private enterprise in every reasonable way, should not allow itself to be dominated by the utilitarian spirit, for its special function is to look to the future welfare of the governed, and not exclusively to immediate economic success. The time when the bulk of population of Tropical Africa will be able to stand alone under the strenuous conditions of the modern world may not yet be determined, but the mandates impose upon the Powers which have accepted them the obligation to conduct the people towards that goal.³¹ The mandatory Power will therefore have to stress moral welfare and social progress above the material development of the territory.

³⁰ See Minutes of the Permanent Mandates Commission, 7th Session, Annex 11, *Economic Development of Mandated Territories in Its Relation to the Well Being of the Natives*; Memorandum by Sir F. Lugard.

³¹ *Ibid.*, p. 196.

Another member of the Mandates Commission, M. Freire d'Andrade, while agreeing in principle with Sir F. Lugard's memorandum that the moral welfare and social progress of the natives should not be sacrificed for the economic development of the territory, was of the opinion that provision for the material development of the territory and the moral well being and social progress of the inhabitants includes all the inhabitants and not the natives alone.³² The only obligation imposed upon the Mandatory, he said, is that of Article 23 of the Covenant to treat the natives justly. He advised assimilation of the natives with the European settlers, and the suppression of native organizations by direct administration.

Problems often met with, often attempted to be solved, but which have not yet entirely disappeared, are the problems of slavery and slave-trade in backward areas, especially in the African continent. The problem of slavery is connected with the supply of labor, which is a burning problem in almost all the mandated territories. In the provisions of the respective mandates of the B and C categories that bear upon this point there is an important difference. In the B mandates the Mandatory is charged to: first, provide for the eventual emancipation of all slaves and for as speedy an elimination of domestic

³² Minutes of the Permanent Mandates Commission, 7th Session, Annex 12, "The Interpretation of that part of Article 22 of the Covenant which relates to the well being and development of the peoples of mandated territories." Note by M. Freire d'Andrade.

and other slavery as social conditions will allow; second, to suppress all forms of slave-trade; third, to prohibit all forms of compulsory labor, except for essential public works and then only in return for adequate remuneration; and fourth, to protect the natives from fraud and force by careful supervision of labor contracts and the recruiting of labor. In the C territories only slave-trade, and not slavery, is provided against.³³ The difference, however, is neutralized by the fact that neither slavery nor the slave-trade exist in the C territories.³⁴ Slavery is very hard to define. The relations between employer and employee may be so varied as to defy all definitions. But all mandatory Powers in the B Mandated territories have enacted legislation for the emancipation of slaves, if the slaves desire it, which is not always the case.

A harder problem to tackle is that of compulsory labor, which, in order to promote the material and moral well being of the natives, must often be resorted to by the administering Power. What is, for example, compulsory labor, and what public works and services may be called essential? A literal interpretation of the provisions against compulsory labor

³³ The provision against compulsory labor is the same as the B mandates. See above.

³⁴ See Minutes of the 3d Session of the Mandates Commission, Annex 5 A, Comparative Statement concerning matters appertaining to Labor and Slavery in territories under Mandate. Report by Mr. Grimshaw, representative of the International Labor Office on the Mandates Commission.

would harm rather than benefit the territories in which they are to apply. The Mandates Commission, therefore, has taken a wider view on this question, and judges the acts of a Mandatory by the question whether the natives are being abused and exploited for the benefit of others, as was and still is in some cases the rule in many colonial possessions, or whether such acts are done for their benefit.

The term "forced labor" has thus been given a liberal interpretation by the Mandates Commission. For, if the provision as regards compulsory or forced labor should be literally interpreted the economic development of the mandated areas would be greatly handicapped. The natives in mandated territories, like those of other colonies, were always called upon to provide manual labor for current requirements in the town, and for the carrying on of all kinds of local works. These services are rendered, as a rule, without remuneration. Though this form of labor can be reconciled with the terms of the mandates, other forms of labor, such as *corvée* or *prestation* would certainly seem to be forbidden, as not in accordance with the terms of the mandate. However, these forms of labor have not disappeared in the mandated territories, for, in the words of Mr. Van Rees, "it would be impossible to comply with the terms of the mandates which are not based on practical experience and therefore involve consequences of unforeseen extent."³⁵ Mr. Grimshaw,

³⁵ Minutes of the Permanent Mandates Commission, 7th Session, Annex 4, p. 155.

the representative of the International Labor Organization at the Mandates Commission, would make the test of compulsory labor by the existence of an "employer." All compulsory work done for the benefit of a private employer is strictly forbidden by the terms of the mandates, but "duties" prescribed for an individual's own benefit or to prevent injury to himself or his neighbors, in which no "Employer" in any sense is concerned, cannot be regarded as "forced labor."³⁶

The problems of slavery and forced labor, like many other problems, are not peculiar to mandated territories, and their solution has occupied the general attention of the League of Nations, and especially of the International Labor Office. This latter body helped institute a Committee of Experts on Native Labor on which sit four members of the Mandates Commission.³⁷ It is to be hoped that this problem will be solved by the conclusion of a series of international conventions, which, in time, will develop into a Native Labor Charter.³⁸

It is generally believed that in many respects, contact with the West has been harmful to the native in Africa. A great factor in the decrease of their numbers and their degeneration (where this has oc-

³⁶ See Annex 3 to the Minutes of the 10th Session of the Permanent Mandates Commission. Report by Mr. H. A. Grimshaw, p. 165.

³⁷ See *Official Journal*, April, 1924, pp. 534-535, and *ibid.*, Annex 621, pp. 695-697.

³⁸ See Minutes of the Mandates Commission, 12th Session. Annex 7, Statement by Mr. Grimshaw on the work of the International Labor organization in connection with the condition of labor in colonial and similar areas.

curred) has undoubtedly been the importation into Africa of liquor, drugs, arms and other social evils. The importance of the liquor traffic, especially, is shown from the fact that it is put in Article 22 in the same class with arms and the slave traffic. Here, also, the provisions differ in the B and C territories. In the first class, the Mandatory is directed to exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors; while, in the latter, "the supply of intoxicating spirits and beverages to the natives shall be prohibited." Although Article 22 provides for the prohibition of the liquor traffic, all the subsequent provisions dealing with liquor traffic in B and C territories were declared not to be in conflict with it.³⁹ The question of liquor is further complicated by the presence of many whites in these territories, who, presumably, should not be subject to the same regulations as are the natives.⁴⁰ The Liquor Traffic Convention, signed at St. Germain on September 10, 1919, goes much further into the problem than Article 22 or the mandate-charters, but does not clearly define such terms as "liquor traffic," "trade-spirits," "alcoholic beverages." These terms are used differently by different Mandatories. The Council has invited the Mandates Commission to define these terms,⁴¹ the Commission

³⁹ Minutes of the Permanent Mandates Commission, 7th Session, Annex 4. Is there any contradiction between the provisions of Article 22 and the provisions of the B and C Mandates in so far as they relate to the liquor traffic? Memorandum by Van Rees.

⁴⁰ Ibid., p. 153.

⁴¹ *Official Journal*, July, 1926, p. 807.

decided to make a special study of the subject, and, in its 13th session, demanded more information from the mandatory Powers.⁴²

The military organization in mandated territories has been given a great deal of attention by the Mandates Commission. The provisions in the mandates for the B and C territories are practically the same, though differently phrased. The B mandates⁴³ provide that, "The Mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications nor organize any native military force except for local police purposes and for the defense of the territory." The corresponding article in the C Mandates provides that, "The military training of the natives, otherwise than for the purpose of internal police and local⁴⁴ defense of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory."

In a memorandum "What is the Military Organization allowed in Territories under B and C Mandates," Mr. Van Rees, Vice-Chairman of the Mandates Commission, interpreted these provisions to mean "the complete neutrality of mandated terri-

⁴² Monthly Summary of the League of Nations, September, 1928.

⁴³ The French mandates in Africa are, with respect to the military clauses, in a class by themselves, and will demand, therefore, special discussion.

⁴⁴ The word "local" appears only with the C mandates. The military forces of a C territory cannot be used by the Mandatory for defensive action outside the territory. See report by Mr. Freire d'Andrade, Annex 4, Minutes of the 9th Session of the Permanent Mandates Commission.

tories in the event of war, whether the Mandatory is belligerent or not.”⁴⁵ He further declared that “any organization of native military forces which is not in accordance with strictly local requirements for the maintenance of order and for the defense of the territory would be contrary to the spirit of the Covenant.”⁴⁶ This very strict interpretation takes away from the Mandatory all military advantages that they might enjoy were the territories colonial possessions under their full sovereignty. The British Government, willing to pay “due regard to the views of the Permanent Mandate’s Commission,” decided not to maintain their right to recruit natives of a mandated territory for enlistment in His Majesty’s Forces outside of the boundaries of the mandated territory.⁴⁷

In the French Mandates, the article dealing with the military organization of the territory contains an additional clause which reads as follows: “It is understood, however, that the troops thus raised—‘for local police purposes and for the defense of the territory’—may, in the event of general war, be utilized to repel an attack or for the defense of the territory outside that subject to the Mandate.” The insertion of this clause was insisted upon by the

⁴⁵ See Minutes of the 7th Session of the Mandates Commission, Annex 4C. Mr. Van Rees quotes Stoyanovski, *Les Mandates Internationaux*, p. 173, to this effect.

⁴⁶ *Ibid.*, p. 158.

⁴⁷ Minutes of the 4th Session of the Permanent Mandates Commission, Annex 7; The question of Military Recruitment in Mandated Territories was discussed by the Mandates Commission at its 3d Session. See Minutes, pp. 197-198.

French Government which desires to use native troops of the mandated territories, in Europe, in the event of another war.⁴⁸ If France be permitted to use in Europe any amount of troops drawn from her mandated territories, such a permission would certainly be contrary to the spirit of Article 22 of the Covenant, and to all the concepts of mandatory administration. Mr. Van Rees, in the Memorandum above mentioned, came to the following conclusion with regard to these two French Mandates: first, in time of peace, France is subject to the same obligation as any other Mandatory, that is, France is not authorized to recruit, by conscription or voluntary enlistment, more troops than are needed for local police purposes and for the defense of the territories; and second, in the case of a general war France may use these native troops, and no more, anywhere, even in Europe.⁴⁹ The advantages which France expects to gain from this additional clause are thus excluded by this interpretation. For, in the event of a general war, she could not recruit any more forces than in normal times, and she probably could not take away the peace forces from the territory and thus leave the territory wholly unprotected.

In the past, the natives in Africa have been subject to great abuses at the hands of unscrupulous white settlers. Before the arrival of European powers, land, as a rule, was held in common by the tribes. This right of tribal ownership was recognized by the

⁴⁸ See Miller, II, 216-220.

⁴⁹ Van Rees, *ibid.*, p. 158.

occupant who could neither alienate nor mortgage his land.⁵⁰ By disregarding this custom among the primitive, and treating the occupants as owners, much of the land possessed by natives came to be alienated from them, with the result that they were deprived of their means of sustenance.⁵¹ In the B mandates there is a special article dealing with this subject. It reads:

In the framing of laws relating to the holding or transfer of land, the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native populations.

No native land may be transferred, except between natives, without the previous consent of the public authorities, and no real right over native land in favor of non-natives may be created except with the same consent.

The Mandatory shall promulgate strict regulations against usury.⁵²

The Mandates Commission has been further advised on this question by the Anti-Slavery and Aborigines Protection Society.⁵³

Besides the problems already discussed, there are others which the Mandatory meets in the course of its administration and which it is supposed to solve in

⁵⁰ See Paul S. Reinsch, *Colonial Administration*, ch. viii, The Land Policy.

⁵¹ The advantages of private ownership as opposed to common ownership of land in Africa is exhaustively discussed by Lugard, chs. xiv, xv, xvi.

⁵² See Article 6 of the Mandate for Tanganyika, and Article 5 of all the other B mandated territory.

⁵³ See Minutes of the 2d Session, Annex 5, The Land question in the Mandated Territories of Africa. For a discussion of land tenure from a different point of view, see below, ch. ix.

accordance with the spirit of the Covenant. In settling the financial claims of the Mandatory against a mandated territory, the Mandatory is expected itself to assume all the costs of war and military occupation. Other items, such as may be regarded as normal administrative expenditures, may reasonably be debited to the mandated territory.⁵⁴ As a rule, no Mandatory is allowed to show direct financial gains from its administration of a mandated territory. If any thing, such administration should be prepared to meet a financial loss; this certainly was the fact during the first years of administration.⁵⁵

The Mandatory may not profit even from an enterprise which it may undertake in a mandated territory. At its third session, the Mandates Commission adopted the following declaration of principles: "It would be contrary to the spirit of disinterestedness, which is the characteristic of the system of mandates, for a mandatory State to create, under cover of its mandate, in the territory entrusted to it for administration, a government enterprise of an industrial or commercial character the profits of which

⁵⁴ See Memorandum by Marquis Theodoli, Minutes of the 10th Session, Annex 7.

⁵⁵ To mention only two examples: In Syria, France expended for the maintenance of the French Army the sum of 1,782,000,000 francs for the period of 1919-1922. See *Rapport sur la situation de la Syrie et du Liban*, July, 1922-July, 1923, p. 56. In South West Africa the expenditure by the Union of South Africa during the years 1916-1920 was £2,736,985 against £1,186,642 revenue. See *Report of the Administration for the year 1919*, p. 13.

are to be credited to the central budget of the mandatory State.”⁵⁶ This declaration was later qualified by the specification that the disinterestedness of the mandatory State does not conflict “with the ownership of an industrial undertaking established with the mandatory Power’s own financial resources, nor with the foundation of any commercial organization, having as its object the exploitation of the products of the mandated territory . . . subject to the proviso that the powers of the Mandatory are not used in order to assure to the metropolitan budget profits which would not accrue to that budget except for such action.”⁵⁷

The Council, on the recommendation of the Mandates Commission, has passed a number of decisions dealing with various phases of the application of the Mandate. Thus, the frontiers of Ruanda-Urundi were adjusted so as to bring them into accord with the previous agreement on boundaries between Great Britain and Belgium, according to which the Kingdom of Ruanda was to be partitioned. This partition resulted in great hardships to many native tribes.⁵⁸ A similar condition prevailed in the Cam-

⁵⁶ Minutes of the 3d Session, p. 57; The Question of State enterprises arose in the case of New Guinea, where Australia has adopted the policy of State Socialism.

⁵⁷ State Undertakings in territories under B and C Mandates, Annex 10 to the 4th Session of the Mandates Commission. Memorandum by Van Rees.

⁵⁸ See Annexes 8 and 9 to the Minutes of the 2d Session. For the decision of the Council with this question see *Official Journal*, November, 1923, p. 1410.

eroons and Togoland,⁵⁹ and with regard to the boundary between Angola and South West Africa.

The Council has also passed a resolution dealing with loans, advances, and the investment of public and private capital in mandated areas. The uncertainty as to the title possessed by a mandatory State in mandated territories put these territories under certain economic disadvantages. Capitalists hesitated to extend loans to such territories or to invest their capital there.⁶⁰ The Council, in its Resolution, declared, first: "that the validity of financial obligations assumed by a mandatory Power on behalf of a mandated territory in conformity with the provisions of the mandate and all rights regularly acquired under the mandatory régime are in no way impaired by the fact that the territory is under mandate. Secondly, the cessation or transfer of a mandate will not take place unless the Council had been assured in advance that the financial obligations regularly assumed by the former Mandatory will be carried out."⁶¹

At this same time, the Council also adopted a resolution with respect to the extension of special international conventions to mandated territories.

⁵⁹ See Note by Sir F. Lugard, Annex 11, Minutes of the 3d Session of the Mandates Commission. See also *Official Journal*, October, 1924, p. 1401. Since then the British and French Government have made some minor rectifications in their boundaries.

⁶⁰ Minutes of the 3d Session of the Mandates Commission, pp. 311-312. *Ibid.*, 4th Session, pp. 140-141, and 5th, pp. 176-180.

⁶¹ *Official Journal*, October, 1925, p. 1511.

It recommended that the mandatory Powers, and other States, whether Members or not of the League of Nations, which may have concluded special treaties or conventions with the mandatory Powers, should agree to extend the benefits of such treaties or conventions to mandated territories whenever possible and expedient, provided the provisions of these international agreements are consistent with the stipulations of the Covenant and the mandate.⁶²

Education in the mandated territories under discussion is mostly provided by Christian missionaries, who, on the whole, have done a good work in Africa.⁶³ In the regions inhabited mostly by Moslems, however, it has been thought best to restrict their activities. In these provinces the schools are, for the most part, run by the Government itself. But even where the natives do not object to missionary activity, it has sometimes been necessary for the Mandatory to intervene in the interest of the social and moral development of the natives and the maintenance of order. In some of the B territories the competition between missions of different denominations had reached such a degree of intensity that it had degenerated into rivalry. As a result, it was necessary to divide these territories into respective spheres of influence for each of the religious sects.⁶⁴

⁶² Ibid.

⁶³ See Lugard, ch. xxi-xxii.

⁶⁴ See Minutes of the 3d Session of the Mandates Commission, p. 193.

CHAPTER VII

THE A MANDATED TERRITORIES

The first difficulty with which one is confronted when discussing the territories of the first category, known as the A mandated territories, is to determine how many there are of them. Their number can be put anywhere between one and six, depending upon the point of view from which they are regarded. Officially, only three mandates have been issued. At the meeting of the Supreme Council at San-Remo, in April, 1920, the mandates of the Near East were distributed, as follows: Mesopotamia, and Palestine, to Great Britain; and Syria to France, each territory being treated as a unit.¹ But, for reasons to be mentioned later, the mandate for Iraq, the modern name for Mesopotamia, was never ratified. The people of Iraq are not officially aware of the fact that their country is a mandated territory, and the Iraq Government officially refused to recognize it.² It can

¹ The final entry of the Near Eastern mandates into legal force was delayed by many causes, the chief among them being the non-ratification of the Sèvres Treaty with Turkey, and the intervention by the United States and Italy for the protection of their interests in these territories.

² The Iraq Government "do not desire to avail themselves of the invitation extended to them by the Permanent Mandates Commission to send a representative to appear before that body." See letter from the British Government to the Secretary-General of the League, *Official Journal*, June, 1926, p. 746.

therefore be argued that Iraq is not a mandated territory at all. Syria, on the other hand, has been divided into a number of territories each with a distinctly different legal relation to the mandatory Power. Similarly, Palestine has been divided into two parts. The eastern part has been made into the Emirate of Transjordan, and its relation to Great Britain based on a treaty. Besides this, Palestine offers a perplexity peculiar to itself. In this case the powers of legislation and administration given to the Mandatory are much wider than those enjoyed by the Mandatories in other territories under the A Mandate. In fact they are very similar to those possessed by B Mandatories.

These are only some of the perplexities with regard to the A mandated territories. More will appear as they are individually discussed. But they are enough to point out the difference between the mandates in the Near East and the other mandates. Here, every territory is individual and typical of none of the others. Although there are some important features that are common to all these territories, there are many others, not less important, which are peculiar to each area and which give to it a unique character; so that, in order to understand clearly the political situation in the Near Eastern mandates each territory will have to be separately dealt with.

All three territories form one continuous stretch of land formerly governed by the Ottoman Empire.

The history of each of these territories, in contradistinction to that of the other mandates, is both rich and colorful. They can all look back to a history, in some cases stretching back into millenniums, when each enjoyed a strong and honorable position in the then concert of Powers. It is this history, or rather the memory of it, that still inspires the people to strive for a future, free from interference and control of the foreign Western Nations. When dealing with their territories the West thus encounters a strong wall of tradition, stubbornly held and defended against all attacks, a wall which the West can hardly hope ever to break down.³ The minds of these Eastern nations are not *tabula rasa*, ready to receive the impressions of the modern West without opposition.

Paragraph 4 of Article 22 which deals with the A mandated territories reads, as follows: "Certain Communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory."

Political considerations at the time the Article was written may have caused its provisions to be put in

³ See *The Occident and the Orient*, by Sir Valentine Chirol; also *Mohammedanism*, by Christian Snouck Hurgronje.

just these words. But it is needless to say that the authors of this Paragraph were unduly optimistic, as the political history of the years following the war sufficiently proved. The peoples of these territories had not yet reached such a stage of development that they could be recognized, even provisionally, as independent nations, and more than mere advice and assistance had to be rendered to them until such time as they should be able to stand alone. The Council of the League greatly modified this paragraph when issuing the mandates. The terms of the mandate-charters are thus a better guide than is Article 22 to conditions as they really are.

The political history of Iraq since the institution of the mandates system is the best illustration of what principles this system intended to introduce into international relations and colonial administration. It is a history, to approximate which is the hope of the rest of the A mandated territories. The reasons why the mandate has worked best here are not all internal ones, but external too; it is not only because the people of Iraq are more developed and are more ripe for self-government, but because the mandatory State has found it best for its own interests to assume as little responsibility as possible.⁴

Mesopotamia, believed to be the cradle of humanity, has had a great and glorious past. At one

⁴ For a history of Iraq see S. Longregg, *Four Centuries of Iraq*; see also *The Heart of the Middle East*, by Richard Coke, and *Modern Turkey*, by Eliot Grinnel Mears.

time, its rulers rivaled in glory and power the great European emperors of the middle ages. The most illustrious of them all was the famous Haroun-al-Rashid, a contemporary of Charlemagne. These rulers, however, degenerated and very soon fell before the advancing Osmans or Turks, and, thereafter, Mesopotamia was ruled by the Turks with varying degrees of success. The Turks were never able to establish a strong control in this territory; their authority was extremely weak, and indeed practically non-existent among the tribes which formed two-thirds of the population.

Great Britain became interested in Mesopotamia, or, rather, in the eastern part of it, the Province of Bassra, because of its proximity to British Indian and to its interests in the Persian Gulf;⁵ and it was this province that was occupied by the Mesopotamia Expeditionary Forces as early as November, 1914. Later in the war, the rest of the country was conquered and put under military administration.⁶ At that time the British Government's policy toward Mesopotamia was not clear to the Arabs, nor probably was it fully clear to the British Government itself. The administration of the country was carried on mostly by Anglo-Indians; very few natives being employed. The result was that although the administration was strongly effective and beneficial

⁵ See the *New World*, by Isaiah Bowman, pp. 72 ff.

⁶ Mosul was the only province not conquered before the Armistice with Turkey, signed October 30, 1918.

to the country, it had the character of a foreign conquering one. The administering Power repeatedly issued declarations to the people in which they were told that Great Britain was in Mesopotamia solely for the purpose of delivering the Arabs from the oppressive yoke of the Turks, and that they could look forward to a bright future under an Arab rulership. The Arabs took these declarations for what they were worth: namely, as declarations made during war by a conquering Power and aiming to gain the sympathy of the population, and thus to ensure the maintenance of peace in the territory, and an unhampered continuation of the war. Meanwhile, the British in Mesopotamia established a direct and efficient administration with the help of Indian officials, and spent large amounts of money for public works and utilities. To the people of Mesopotamia this meant that Great Britain had come with the intention to stay; and under ordinary circumstances they would have undoubtedly become resigned to the situation in the traditional fashion, according to Oriental fatalism.

But events in neighboring Syria, where an Arab Kingdom was set up under King Feisal of the Sherefian family, in addition to a number of other local causes, no doubt greatly influenced Iraq.⁷ There re-

⁷ The Anglo-French Declaration of November 7, 1918, which promised complete and final liberation and the establishment of native government, and the failure of France and Great Britain to act in accordance with these promises, was also an important cause of the rebellion of August, 1920.

sulted a number of disturbances in all corners of the country which, for a time, threatened the existence of the British Administration in Iraq. The putting down of this rebellion was a very slow and costly process. Meanwhile, there arose in Great Britain a general demand that the Government should withdraw entirely from Mesopotamia; that it forego any further annexation of territory in the Near East; and that it refuse to accept the mandate for Iraq. This, of course, England could not do. In the words of Winston Churchill, Colonial Secretary at the time, "We do not want to break our own word and fail in our engagements to persons weaker than ourselves. We do not want to exhibit our country in a position of having undertaken before the whole world a task of solemnity and importance and then fail miserably in its discharge."⁸ A master stroke was needed both to pacify the people of Iraq and to gain their confidence and understanding, without, at the same time, drawing unduly upon the coffers of the British Treasury. This was done by the appointment of Sir Percy Cox, who knew the Arabs and was known by them, to be Civil Commissioner of Mesopotamia.

Sir Percy Cox established an Arab National Government headed by a Provisional National Ministry. The English secretaries now became advisers to Arab rulers. Later, when Feisal fled from the French in Syria, he was chosen King of Iraq with British support. He was made head of the country with the

⁸ *Empire Review*, July, 1923, p. 694.

understanding that his government should be constitutional, representative, and democratic.

Owing to these occurrences, the draft mandate for Mesopotamia was never ratified, and the relations between the mandatory Power and the territory of Iraq came to be regulated by a treaty. This Treaty, which was finally signed on October 12, 1922, and is known as the Treaty of Iraq, contains practically the same provisions as the draft mandate, with, however, the phraseology so changed as to make it harmonize with the new conditions.⁹ Article 1 of the Treaty provides that, at the request of the King of Iraq, His Britannic Majesty undertake, subject to the provisions of the Treaty, to provide the State of Iraq with such advice and assistance as may be required, without prejudice to her national sovereignty. The King of Iraq agrees to be guided by advice and assistance, especially on matters affecting the international and financial obligations and interests of His Britannic Majesty, for the whole period of the Treaty.¹⁰ His Majesty, the King of Iraq, is himself to issue exequaturs to representatives of foreign Powers in Iraq, after His Britannic Majesty shall have agreed to their appointment.¹¹ Of special importance is the provision by which Iraq binds itself to enact legislation necessary to ensure

⁹ For Text of Treaty and the Draft Mandate for Mesopotamia see Temperley, VI, Appendix II, Part IIIA and Part IIIB, respectively.

¹⁰ Article 4.

¹¹ Article 5.

the execution of the undertakings and agreements which His Britannic Majesty is under obligation to see carried out in respect of Iraq.¹² Other provisions of the Treaty deal with the open-door and equal opportunity for all members of the League,¹³ with missionary enterprises,¹⁴ and with the Law of Antiquities.¹⁵ The Permanent Court of International Justice is to decide in case any differences arise between the High Contracting Parties as to the interpretation of the provisions of this Treaty.¹⁶ His Britannic Majesty undertakes to use his good offices to secure the admission of Iraq to membership of the League of Nations as soon as possible.¹⁷ In such a case, the obligations assumed by His Majesty's Government are to terminate.¹⁸ The Treaty is not to be modified without the consent of the Council of the League of Nations.¹⁹

The radical change from mandatory to treaty relations between Great Britain and Iraq was agreed to by the Council of the League, upon the request of the British Member on the Council. At the fifteenth session of the Council, held in November, 1921, Mr. Fisher, the British Member, reported upon the situation in Mesopotamia. He declared that His Maj-

¹² Article 10.

¹⁴ Article 12.

¹⁶ Article 17.

¹⁸ Article 18.

¹³ Article 11.

¹⁵ Article 14.

¹⁷ Article 6.

¹⁹ This treaty was soon afterward supplemented by the Protocol of April 30, 1923, and four subsidiary agreements. For full texts of these agreements see League of Nations Doc. C 216 M. 77, 1926 VI.

esty's Government " thinks it desirable to inform the League that the political developments in Iraq have led them to the conclusion that their obligations *vis-a-vis* the League can be most effectively discharged if the principles on which they rest are embodied in a treaty to be concluded between His Majesty's Government and the King of Iraq. They found themselves unable to resist the overwhelming desire of the people of Iraq for the formation of a national Government under an Arab ruler. The march of events was so rapid that it did not admit of consulting the Council before taking steps of which they were confident that it would approve; namely, the recognition of the Sovereign whose recent accession to the throne followed upon the universal demand. The recognition of a local Sovereign modified to some extent the position of the Mandatory Power, and it is to meet the needs of the situation as thus modified that His Majesty's Government finds it necessary to define their relations with the local authority in the manner proposed." ²⁰ The report ended with the following statement: " It will be understood that the proposed treaty will serve merely to regulate the relations between His Majesty's Government, as Mandatory Power, and the Arab Government of Irak. It is not intended as a substitute for the Mandate, which will remain the operation document de-

²⁰ See Report of Mr. Fisher, *Official Journal*, December, 1921, p. 1215.

fining the obligations undertaken by His Majesty's Government on behalf of the League of Nations." ²¹

This last statement was modified in the final decision of the Council on the status of Iraq. The Draft Mandate for Mesopotamia is not the operative document for the mandate. ²² "The conception of mandate being unpopular in Iraq and inconsistent with the actual status of Iraq, the British Government thought it no longer practicable to adopt a mandatory form even for the regulation of its obligations towards the League." ²³ But, as the Treaty of Alliance embodies the most important provisions of the draft mandate, there is practically no great difference in fact. ²⁴

King Feisal convoked a Constituent Assembly which adopted an Organic Law for Iraq, at the beginning of which it was laid down that "Iraq is a Sovereign State, free and independent. Its sovereign rights are indivisible and inalienable. Its Government is that of a hereditary monarchy, and its form representative." ²⁵

Although the early history of the after-war period in Syria was similar to that of Iraq, its subsequent

²¹ Ibid., p. 1217.

²² Ibid., October, 1924, p. 1314.

²³ Ibid.

²⁴ See Minutes of the 7th Session of the Mandates Commission, pp. 94-95.

²⁵ See article by Mr. Richard Coke, "The Newest Constitution in an Ancient Land," *Current History*, November, 1924. The full text of the Organic Law of Iraq is to be found in League of Nations Doc. C 412, 1924, VI C P M 166.

political development has been quite different.²⁶ Not only does Syria not possess an established representative government with a constitutional ruler accepted as such by all the population, as Iraq has, but it does not as yet have the organic law which the Mandatory was expected to frame within a period of three years from the coming into force of the mandate.²⁷ But, though Syria has not yet an organized constitutional government, the Lebanon enjoys a Republican Government.²⁸

The French policy with regards to Syria has never been definite, or even consistent. The French High Commissioners, who followed one another in quick succession, have each been experimenting with the political organization of this mandated territory.²⁹ This uncertainty greatly lessened the prestige of France in the eyes of the natives and made its position an even more difficult one than it originally had been.³⁰ Martial law, which was first declared April 1,

²⁶ For the history of this period see Temperley, VI. See also *Syria*, by Leonard Stein.

²⁷ Article 1, paragraph 1, of the Syrian Mandate.

²⁸ See Statement by Robert de Caix, the accredited representative of the French Government, before the Mandates Commission at its 4th Session, pp. 26-31; see also the Minutes of the Eighth (Extraordinary) session of the Permanent Mandates Commission which was wholly devoted to the problems of Syria.

²⁹ Since the assignment of the mandate to France there were five High Commissioners, one of them, General Sarrail, ruling less than a year.

³⁰ The greatest handicap that France has to overcome in Syria, and one she may never be able to overcome, is the fact that France has historically been the protector of the Christians, especially of the Maronites of Lebanon, against the Mohammedans, and Syria is eighty per cent. Mohammedan. See Article by Marcel Ray, "France in Syria," *Living Age*, December 15, 1926.

1919, was continued long after the capture, in July, 1920, of Damascus from King Feisal, then the head of an Arab National Government in Syria, and remained legally in force until January 10, 1925.³¹

At present, the mandated territory of Syria and the Lebanon is partitioned into the following territorial divisions:

(1) The Independent State of Lebanon, which has a Republican form of Government with its capital at Beirut.³² The President of the Republic is allowed by the Constitution to negotiate and ratify treaties, subject, however, to Article 3 of the mandate-charter,³³ according to which the Mandatory is entrusted with the exclusive control of foreign relations. All the powers under the constitution are subject to the rights and duties of the Mandatory Power which result from Article 22 of the Covenant of the League of Nations and the mandate.³⁴ Special Articles of the Constitution deal with the relations of Lebanon to the neighboring State of Syria.³⁵ Another article provides for the entry of Lebanon into the League of Nations "as soon as circumstances will permit."³⁶

(2) The State of Syria comprises the former confederate States of Damascus and Aleppo. The Con-

³¹ See Minutes of Permanent Mandates Commission, 8th Session, p. 67.

³² The Constitution of Lebanon is to be found in the *Rapport à la Société des Nations sur la situation de la Syrie et du Liban*, Année 1926, Annex No. 1.

³³ Ibid., ch iv, Article 52.

³⁵ Ibid., Articles 92-93.

³⁴ Ibid., Article 90.

³⁶ Ibid., Article 91.

stitutional Assembly, which was elected by the people to form the organic law of the State, was dissolved by the High-Commissioner because it refused to recognize the French mandate over Syria and the administrative changes made by France in Syria.³⁷

(3) The Jebel Druse. The Druses, a small but very aggressive tribe, enjoyed for a time special privileges by an agreement between their chiefs and the Mandatory. But, as a result of the Syrian rebellion, the agreement became obsolete.³⁸ Owing to internal dissension no constitutional government has, as yet, been established there.³⁹

(4) The Alouite State, on account of its being always in a state of revolution, has been separated from the rest of Syria and formed into a separate state.⁴⁰

(5) The Province of Alexandretta, like the Jebel Druse and the Alouite State, is governed by a French Governor. This sandjac or province enjoys a special status according to the Franklin-Bouillion Agreement signed at Angora in October, 1921.⁴¹

³⁷ See Article by Professor Albert Howe Libyer, "The Demand for Political Freedom in Syria and Palestine," *Current History*, November, 1928.

³⁸ Minutes of the Mandates Commission, 11th Session, p. 162.

³⁹ *Rapport a la Societe des Nations sur la situation de la Syrie et du Liban*, Année 1927, p. 18.

⁴⁰ See Statement by the High-Commissioner of the French Republic for Syria. Minutes of the 9th Session of the Mandates Commission, p. 112.

⁴¹ For the text of the Angora Agreement see *American Journal of International Law*, supplement, XVII, 48.

The mandate itself is not very clear as to the territories into which Syria should be divided.⁴² The preamble and the various articles of the mandate-charter speak of the territory of Syria and Lebanon, in the singular. In only one place does the mandate-charter speak of Syria and the Lebanon as two distinct units. This is where, by its first article, it is provided that the Mandatory is to enact measures to facilitate the progressive development of Syria and the Lebanon as independent States.

The terms of the mandate for Syria and the Lebanon do not differ greatly from those of the Draft Mandate for Mesopotamia. The Mandatory is charged with framing an organic law for the territory of Syria and the Lebanon, which is to be done in agreement with native authorities, and is to take into consideration the rights, interests, and wishes of all the population inhabiting the territory.⁴³ For the duration of the mandate, foreigners in Syria are not to enjoy the privileges and immunities they formerly enjoyed by capitulations or usage.⁴⁴ But their rights as well as the rights of the natives are to be guaranteed by a judicial system, which the Mandatory is charged to establish.⁴⁵ Many provisions are carried over from the B and C mandates. Such are the various provisions for liberty of conscience,⁴⁶ the

⁴² The question of territorial divisions of Syria was discussed by the Mandates Commission at its 17th meeting of its 8th (extraordinary) Session.

⁴³ Article 1.

⁴⁴ Article 5.

⁴⁵ Article 6.

⁴⁶ Articles 6-7-8.

rights of missions⁴⁷ and the open door.⁴⁸ The Mandatory is to adhere, on behalf of Syria and the Lebanon, to any general international agreement which already exists or which may yet be concluded with respect to a number of fields within which the League of Nations may find it necessary to adopt.⁴⁹ French and Arabic are to be the official languages of Syria and the Lebanon.⁵⁰ The Mandatory is entitled to demand from the native Government, when established, reimbursement of all expenses incurred by it in organizing the administration, developing local resources, and carrying out permanent public works, of which the country retains the benefit.⁵¹ The Governments of Syria and Lebanon, in case of the termination of the mandate, are to be responsible for all financial obligations, including pensions and allowances, regularly assumed on their behalf by the Administration of Syria and the Lebanon during the period of the mandate.⁵²

The mandate for Palestine is, in more ways than one, peculiar. There are so many differences between its terms and those of other mandates, irrespective of what category they may belong to, that it must be considered as *sui generis*. The preamble of the mandate-charter for Palestine, after reciting the Balfour Declaration of November 2, 1917, in favor of a national home for the Jews in Palestine,⁵³ de-

⁴⁷ Article 10.

⁴⁸ Article 11.

⁴⁹ Articles 12-13.

⁵⁰ Article 16.

⁵¹ Article 15.

⁵² Article 19.

⁵³ The Balfour Declaration reads as follows: "His Majesty's Government views with favor the establishment in Palestine of a

clares that "recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country." The peculiar character and importance of this declaration will be understood when one considers that, both at the time when Lord Balfour issued his declaration, and when the mandate for Palestine was given to Great Britain, Jews formed only twelve per cent. of the total population.

The special recognition thus given to the rights of a people not at the time forming a majority of the population necessitated important changes in the provisions of the Palestine Mandate. The very first Article of the mandate-charter gives the Mandatory powers of legislation and administration similar to those possessed by B Mandatories. It does not charge the Mandatory, as in the case of Syria, with framing an organic law for Palestine.⁵⁴ The Mandatory is charged with placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish National

National Home for the Jewish People, and will use their best endeavors to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish Communities in Palestine or the rights and political status enjoyed by Jews in any other country."

⁵⁴ Article 1 in full reads as follows: "The Mandatory shall have full powers of legislation and administration save as they may be limited by the terms of the mandate." The fundamental difference between the provisions for the administration of Syria and Palestine, is to be discerned through almost all the terms of their respective mandate-charters.

home while at the same time safeguarding the civil and religious rights of the rest of the population of the country.⁵⁵ In doing this, the Mandatory is to ask the advice of a Jewish Agency "recognized as a public body for the purpose of advising and cooperating with the Administration of Palestine in such economic, social and other matters as may effect the establishment of the Jewish national home and the interests of the Jewish population in Palestine."⁵⁶ Other privileges extended to the Jews, as a result of the recognition of the Balfour Declaration by the Council of the League of Nations, are those provisions that deal with land settlement,⁵⁷ Palestinian nationality,⁵⁸ the construction and operation of public works, services, and utilities, and the development of natural resources,⁵⁹ and the recognition of Hebrew as one of the three official languages of the country.⁶⁰

These peculiarities of the Palestinian Mandate, which is the nature of a payment by the nations of Europe of a debt of conscience to the Jewish people, have furnished a basis for the claim that the provisions favoring the establishment of a National Home for the Jews in Palestine are contrary to the provisions of Article 22.⁶¹ Paragraph 4 of this Article, it will be remembered, provided that A mandated territories should be provisionally recognized

⁵⁵ Article 2.

⁵⁸ Article 7.

⁵⁶ Article 4.

⁵⁹ Article 11.

⁵⁷ Article 6.

⁶⁰ Article 22.

⁶¹ *Official Journal*, June, 1921, pp. 331-340; see also Minutes of the Mandates Commission, 7th Session, pp. 160-173.

as independent States, and that "the wishes of these communities must be a principal consideration in the selection of the Mandatory." In answer to this claim Sir William Finley, K. C., in a legal opinion addressed to the Director of the Mandates Section declared that this paragraph was not applicable to Palestine.⁶² Though the general object of Article 22 is to secure the well-being and development of the mandated territories, yet, he said, "it could not be laid down that no special privileges were to be conferred on any nationality or body. It might be of the essence of a perfectly proper scheme that some such privileges should be conferred."⁶³ Further on he declares that, in his view, "it is impossible upon any principle of construction to say that there is any inconsistency between this scheme—settlement of the Jews in Palestine—and either the letter or the spirit of Article 22 merely because the scheme, which may benefit Palestine, may also benefit one particular people, viz: The Jews."⁶⁴

Like Syria, Palestine is not a unity in a legal sense. The Eastern part of Palestine, lying to the East of the River Jordan, has been separated from the rest of Palestine and made into the Emirate of Transjordan. But, unlike the various partitions made in Syria, this partition was made in accordance with a specific provision of the mandate-charter. Article 25 of the Palestinian Mandate provides that, in this particular part of the country, the Mandatory

⁶² *Official Journal*, July-August, 1921, pp. 443-444.

⁶³ *Ibid.*, p. 444.

⁶⁴ *Ibid.*

may postpone or withhold application of such provisions as it may consider inapplicable to the existing local conditions. The provisions here referred to were understood to be those that relate to Jewish privileges in Palestine. At the twenty-first session of the Council of the League, the British member, in a memorandum, proposed to withdraw from Transjordan the special provisions which were intended to provide a national home for the Jews west of the Jordan.⁶⁵ The Council agreed to this change.⁶⁶ According to this resolution Articles 13 and 14, which concern themselves with the Holy Places, are not applicable to Transjordan. Since the passing of this resolution, Transjordan has been governed under a separate administration, although the High Commissioner for Palestine also serves in the same capacity for Transjordan. The relations between the Mandatory and Transjordan are based on treaty agreements, similar to those of the Anglo-Iraq Treaty.⁶⁷

At its thirteenth session, the Mandates Commission questioned the propriety of the conclusion of such an agreement between Great Britain and Transjordan without the previous assent of the Council.⁶⁸ It was the opinion of the accredited representatives that the Council, by its decision of September 16, 1922, which implemented Article 25 of the Mandate

⁶⁵ *Official Journal*, November, 1922, Annex 420.

⁶⁶ *Ibid.*, p. 1189.

⁶⁷ For the text of this agreement see *The Near East and India*, April 5, 1928.

⁶⁸ Minutes 42-45.

for Palestine, had already approved this step.⁶⁹ The Commission thought that Article 2 of the Agreement, which reads :

The powers of legislation and administration entrusted to His Britannic Majesty as Mandatory for Palestine shall be exercised in that part of the area under mandate known as Transjordan by His Highness the Amir. . . .

was inconsistent with Article 1 of the Mandate for Palestine, which provides that "The Mandatory shall have full power of legislation and administration, save as they be limited by the terms of this mandate." ⁷⁰

The Council, in view of the statement of the British representative that his government "considered itself responsible for the application of the mandate," voiced its conviction that, in these circumstances, the Agreement was in conformity with the Mandate.⁷¹

From the preceding discussion of the A mandated territories it is clear that they are not a compact, consistent class by themselves. Yet they, more than any other mandated territories, furnish the best opportunity for testing the working of the theory and principles of the mandates system, and are, therefore of special interest to the students of international affairs, and especially to the students of the relations between East and West.

⁶⁹ Ibid., p. 44.

⁷⁰ Ibid., Annex 7, p. 226.

⁷¹ See Monthly Summary of the League of Nations, December 15, 1928, p. 375.

CHAPTER VIII

THE SITUS OF SOVEREIGNTY AND OTHER LEGAL QUESTIONS

In the Report presented by M. Paul Hymans, the Belgian representative on the Council of the League of Nations, at its meeting at San Sebastian, on August 2, 1920, dealing with the responsibilities of the League arising out of Article 22, M. Hymans declared: "I shall not enter into a controversy—though it would certainly be very interesting—as to where the sovereignty in mandated territories actually resides. We are face to face with a new institution. Legal erudition will decide as to what extent it can apply to this institution the older juridical notions."¹

The question as to the location of sovereignty in mandated territories is not only interesting but important, as was proven by M. Hymans himself earlier in the above mentioned Report when he discussed the allocation of the mandates and the legal title of the mandatories. He said: "It is not enough, however, that the mandatory Powers should be appointed; it is also important that they should possess a legal title—a mere matter of form perhaps, but one which should be settled, and the consideration of which will help towards a clear understanding of the conception of mandates."²

¹ Assembly Doc. 161, p. 17.

² Ibid., p. 14.

The late Secretary Lansing, referring to the establishment of the mandates system in an address before the American Bar Association, called that system a novelty in political authority, "which the more it is studied from the legal standpoint the greater the number of problems which it presents."³ Touching on the question of sovereignty he said: "It is not an overstatement to say that nine-tenths of all international controversies arise over questions pertaining to the possession of sovereignty and the conflict of sovereign rights. . . . The system of mandates must be philosophically and logically worked out from the legal point of view or it will result in confusion."⁴

The challenges thrown to juristic erudition by M. Hymans and Secretary Lansing have been accepted by a number of jurists and students of international law. The result has been that a number of theories regarding sovereignty and its location in mandated territories have been propounded which would seem to have almost exhausted the possibilities of the problem.

As regards the political persons or entities in which it is conceivable that the sovereignty may be found, there are the mandated territories themselves, the mandatory Powers which administer them, the Principal Allied and Associated Powers which

³ "Some Legal Questions of the Peace Conference," address by Hon. Robert Lansing before the American Bar Association, *American Journal of International Law*, October, 1919, pp. 631-650.

⁴ *Ibid.*, p. 640.

have distributed the mandates, and lastly, the League of Nations on whose behalf the mandated territories are governed. Sovereignty can possibly be located in either one of these four or in any combination of them.

The concept of sovereignty as a basis of the modern State was first announced by Jean Bodin in a work *Six livres de la republique*, published in 1576.⁵ His theory of sovereignty furnished a theoretical and legal justification for the gradual extension of the powers of the French kings over their feudal lords. "Majesty of Sovereignty," Bodin declared, "is the most high, absolute and perpetual power over the citizens and subjects in a commonwealth . . . that is to say, the greatest power to command."⁶ He added that it was necessary for him to define sovereignty because "it is the principal and most necessary point for the understanding of the nature of a commonwealth."⁷

A modern writer defines sovereignty as follows: "[Sovereignty] implies the conception of the State as a volitional entity or political person, and designates that faculty which the political person possesses of delimiting, by its own fiat, what are to be the legal rights and duties which it will recognize, and if necessary enforce; what person it will consider subject to its authority, and over what ter-

⁵ English Translation by Richard Knolles (1606).

⁶ Ibid., p. 84. The quotations from Knolles Translation here given have been rendered into modern spelling.

⁷ Ibid.

ritory it will claim exclusive jurisdiction.”⁸ Discussing the situs of sovereignty and its test, the same author says that “the presence or absence of sovereignty in a given political entity depends upon whether or not that entity has such complete control over its own legal competence that it cannot, against its own will, be legally bound in any way whatsoever by the legal will of another political body.”⁹

The doctrine of sovereignty is not solely an abstract or metaphysical one with which only legalists and abstruse thinkers may occupy themselves. It is bound up with the existence of the State and is essential to it in its relation both to its citizens and to the outside world. Thus Professor John Dickinson, in an article on the working theory of sovereignty,¹⁰ after defining sovereignty in the legal sense as “nothing more nor less than a logical postulate or presupposition of any system of order according to law,”¹¹ declares a little further, when discussing the importance of the doctrine in the working of the modern state, that “the entire governmental mechanism, if it is to perform its function, must, in other words, be headed up with a central system of ultimate authority vested with the power to keep subordinate agencies from trespassing on one another’s

⁸ *The Fundamental Concepts of Public Law*, W. W. Willoughby, p. 71.

⁹ *Ibid.*, p. 181.

¹⁰ John Dickinson, “A Working Theory of Sovereignty,” *Political Science Quarterly*, December, 1927, pp. 524-548, and *ibid.*, March, 1928, pp. 32-64.

¹¹ *Ibid.*, p. 525.

fields.”¹² The legal nature of sovereignty demands “the unified organization of authority within the community in order to provide the necessary basis for a system of legal order.”¹³ The unity of control as the chief characteristic of sovereignty as well as its absolute supremacy is also stressed by Professor Willoughby. “Sovereignty as a state attribute,” he declares, “is not only a unity, but one that by its very nature and definition, connotes absolute legal authority. To place a legal limit upon it is, therefore, to destroy it.”¹⁴

Provided thus with the definition of sovereignty, and noting its importance, we turn to an examination of the concept as applied to territories under mandatory administration.¹⁵

The full sovereignty formerly possessed by the German and the Ottoman Empires over the territories later to become mandated territories, was surrendered by them to the “Principal Allied and Associated Powers.” Article 119 of the Treaty of Versailles reads: “Germany renounces in favor of the Principal Allied and Associated Powers all her rights and title over her oversea possessions.”¹⁶ A similar transfer was provided for in the Treaty of Lausanne which established peace between the Allies and Turkey, and which supplanted the earlier un-

¹² Ibid., p. 527.

¹³ Ibid.

¹⁴ Willoughby, p. 76.

¹⁵ The essentiality of sovereignty in the modern state will be further discussed below, ch. ix.

¹⁶ Other Articles of the Treaty of Versailles that relate to mandated territories are Articles 120-127, 243, 257, 260, 297, and 312.

ratified Treaty of Sèvres. Article 16 of the Treaty of Lausanne reads as follows: "Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present treaty and the islands other than those over which her sovereignty is recognized by the said treaty, the future of these territories and islands being settled or to be settled by the parties concerned."¹⁷ It is thus clear that Germany and Turkey have parted with their sovereignty over the territories here considered, and, among the many writers who concerned themselves with the location of sovereignty in these territories, none has asserted that the sovereignty still resides in Germany or Turkey. It is also beyond doubt that the sovereignty, originally, at least, was placed in the Principal Allied and Associated Powers which were charged, among other things, with the liquidation and partition of certain parts of the former enemies' territories. It is, therefore, possible to hold that the sovereignty over these territories still resides in these Powers, and that their appointment of mandatories to govern these territories with the further provision that they be governed on behalf of the League of Nations, was no more than a delegation of the exercise of sovereignty, and not a surrender of it. Such seems to be the opinion of M. Van Rees, the Vice-Chairman of the Permanent Mandates Commission.

¹⁷ Other Articles of the Treaty of Lausanne that relate to mandated territories are Articles 30-36, 46, and 73.

Discussing the system of state lands in B and C mandated territories, he says: "The sovereignty of Germany over her oversea possessions has passed from her to the Principal Allied and Associated Powers. In virtue of their sovereign powers, these States have appointed the Mandatories and entrusted them with the administration of the territories ceded by Germany. In consultation with the other Powers represented on the Council of the League of Nations, they have, in accordance with the Covenant, determined the special conditions of each mandate, while the right of supervision appertaining to these powers as grantors of the mandates, has automatically passed to the League of Nations."¹⁸ According to M. Van Rees, it would seem, then, that though the League has the power of supervision, the actual sovereignty has been retained by the Principal Allied and Associated Powers.¹⁹

Professor William Rappard is another member of the Commission who has expressed himself as favoring the theory that sovereignty in a mandated area resides in the Principal Allied and Associated Powers. At its Tenth Session he declared before the Mandates Commission that, personally, he considered that the sovereignty belonged not to the

¹⁸ Minutes of the Permanent Mandates Commission, 3d Session, Annex 2. The System of State Lands in B and C mandated territories. Report by M. Van Rees, p. 222.

¹⁹ M. Paul Fauchille is of the same opinion. See *Traite de Droit International Public*, Tome 1, 2 ème Partie, p. 849.

League of Nations but to the Principal Allied and Associated Powers.²⁰

A similar view is held by the Government of the United States of America. The United States did not ratify the Treaty of Versailles but has claimed all rights and privileges granted by that instrument to the Principal Allied and Associated Powers and other members of the League. This claim has been justified by the United States on the ground that it was an important Associate during the war.²¹ In a letter from the Secretary of State to the Council of the League, the Government of the United States declared: "As one of the Principal Allied and Associated Powers, the United States has an equal concern and an inseparable interest with the other Principal Allied and Associated Powers in the overseas possessions of Germany and concededly an equal voice in their disposition which it is respectfully submitted cannot be undertaken without its assent."²²

The claim of the United States to equal treatment in the mandated territories in the Near East is rather precarious, for it never declared war against Turkey, and never participated in any military operations against it. Furthermore, the Treaty of Lausanne does not mention the word "Associate," but merely uses the phrase "the parties concerned." The American Secretary of State, however, has

²⁰ Minutes, p. 84.

²¹ See *Official Journal*, March-April, 1921, pp. 137-138.

²² *Ibid.*, p. 138.

justified the claim of the United States to equal treatment in the A mandated territory by referring to the fact that, by participating in the war against Germany, the United States contributed also to the defeat of Germany's Allies.²³

The Council of the League acquiesced in the demand of the United States Government, and, as a result of the intervention of the United States, the ratification of the A and B mandates was a number of times delayed. These mandates were not finally ratified until the United States was assured treatment equal to that of a member of the League. These privileges were accorded the United States, not by a specific provision in the mandates, but by treaties concluded between the United States and the respective mandatory Powers.²⁴ Thus, one paragraph of the preamble of the convention between the United States and France relating to the French Cameroons reads:

“Whereas the benefits accruing under the afore-said Article 119 of the Treaty of Versailles were confirmed to the United States by the Treaty between United States and Germany,²⁵ signed August 25, 1921, to restore friendly relations between these two countries. . . .”²⁶ This preamble seems to establish the rights of the United States in the

²³ See the *New York Times*, April 4, 1924.

²⁴ See letter to Secretary of State of the United States, adopted by the Council on March 1, 1921. *Official Journal*, March-April, 1921, p. 142.

²⁵ *League of Nations Treaty Series* 1924, XXVI, 54.

²⁶ See above, ch. v, note 31.

mandated territories which formerly belonged to Germany.²⁷ The coming into force of the Belgian Mandate in East Africa, Ruanda-Urundi, did not take place until October, 1924, owing to a change in its boundary which was decided upon by the Council of the League, and which required also the assent of the United States Government.²⁸

That the Principal Allied and Associated Powers are sovereigns of the mandated territories seems to be the opinion of Lord Balfour, perhaps the most important British representative on all important committees and councils during the making of the Versailles Treaty and the years immediately following it. Speaking before the Council, on May 17, 1922, Lord Balfour said: "A mandate is a self-imposed limitation by the conquerors on the sovereignty which they exercised over the conquered territory. In the general interests of mankind the Allied and Associated Powers have imposed these limitations upon themselves, and had asked the League to assist them in seeing that this general policy is carried out."²⁹

There are a number of points that favor the acceptance of the theory that the sovereignty over

²⁷ The United States concluded similar treaties with regards to the rest of the A and B mandated territories.

²⁸ *League of Nations Treaty Series* 1926, XLIII, 56. Lorsque, en vue de rattacher au Ruanda la region située a l'ouest de la Kagera et connue sous le nom générique de Kiaska, le conseil de la Société des Nations eut modifié le mandat tel qu'il avait été primitivement établi, il restait a chercher l'adhesion des Etats-Unis d'Amerique. See Rapport présenté par le Gouvernement Belge au sujet de l'administration de Ruanda-Urundi pendant l'année 1924, p. 9.

²⁹ *Official Journal*, June, 1922, p. 547.

mandated territories still resides in the Principal Allied and Associated Powers. First, there is no specific fact, or even an official statement, that would go to prove that the Principal Allied and Associated Powers have parted with the sovereignty which they obtained from Germany and Turkey. There is also the fact that the United States, which is not a member of the League, possesses a voice in decisions affecting the present status of any mandated territory. Furthermore, the fact that no better location can be discovered may serve as a third reason why the Principal Allied and Associated Powers should be considered as sovereign over the territories under mandatory administration.

However, such a theory, if accepted, presents a number of difficulties, some of which are so strong as to prevent its acceptance. First, there is no body existing at the present time which corresponds to the Principal Allied and Associated Powers. This body disappeared soon after the main cause for its creation (the making of peace and adjustment of the various problems that presented themselves at the end of the war) had gone.³⁰ Also, there is no specific mention in the mandate-charters which shows that the Principal Allied and Associated Powers, in granting the mandates, reserved for themselves the sovereign right over them. Upon the contrary, there

³⁰ At present there are in existence only two Inter-Allied Committees, the life of both being limited in time. One is the Inter-Allied Committee on Reparations; the other concerns itself with the military control of Germany.

is in every mandate a specific provision that "the consent of the Council of the League is required for any modification of the terms of this mandate." It would, therefore, seem reasonable to conclude that with the distribution of the mandated territories, the Principal Allied and Associated Powers disappeared as a possible future factor in the administration of these territories. In practice, all important decisions with respect to mandated territories taken after their distribution, have been taken by the Council of the League, which is, in part, composed of States which are not members of the group known as the Principal Allied and Associated Powers, and to which Germany has since been added as a permanent member.

Juristically, also, such a solution abounds with a number of difficulties. According to such a theory five Powers would be sovereigns of one territory. Two of them, Italy and the United States, do not hold any mandates, and the latter is not even a member of the League of Nations. The nationality of the inhabitants of the mandated areas would have to be divided between the five Powers. These inhabitants can not be said to be either the nationals of their former sovereigns or of the territory in which they reside, which is not a State in international law. The constitutional and international problems which the problem of nationality itself presents are serious. The participation of the United States in the ratification of the mandates, as well as the right it seems

to enjoy to be consulted with regard to any contemplated radical change in the status of any mandated territory, must be viewed not as a legal power possessed by the United States as a former member of the Principal Allied and Associated Powers, but as a political concession given by the Council of the League to the United States because of its important position in international affairs.³¹

Sovereignty over the mandated territories can be located in the League of Nations, on whose behalf the territories are governed, whose Council confirmed the mandates as distributed by the Supreme Council,³² and whose assent is required for any modification of the terms of the mandates. It was also the Council to which was given the power to define the degree of authority, control or administration to be exercised by the Mandatories in their respective territories.³³ It is to the Council, also, that the mandatory Powers render annual reports with reference to the territories committed to their charge.³⁴ Clearly, then, there are grounds for entertaining the theory that the League of Nations is the sovereign of the mandated territories.

³¹ See Quincy Wright, "The United States and the Mandates," *Michigan Law Review*, May, 1925, pp. 717-747. See also Robert Redslob *La Théorie de la Société des Nations*, ch. iii, sec. 37.

³² "It must not be forgotten that, although the mandatory Power is appointed by the Principal Allied and Associated Powers, it will govern as a mandatory and in the name of the League of Nations," Hymans' Report, p. 14.

³³ Article 22, paragraph 8.

³⁴ *Ibid.*, paragraph 7.

The Government of Germany in 1920 seems to have entertained this opinion. In a Memorandum distributed to the members of the first Assembly of the League of Nations, that Government contended that "Though some particular State and not the League of Nations is responsible for the administration of these colonies, the duty of designating such States falls upon the League. Any other construction is inconsistent with both the spirit and letter of the Covenant. The States to be selected are Mandatories of the League and fulfill their task under its orders and in its name. Further, a Mandatory of the League can only be appointed by the League itself. There is no suggestion in the Covenant that the League can leave the task of nominating Mandatories to any other authority."³⁵

That the League should be considered as sovereign over mandated territories is also the opinion of a number of writers on international law. As a rule, these writers are of the opinion that international law—the term includes international conventions, general or particular, international custom, and the general principles of law recognized by civilized nations—is legally binding upon the nations, and that any international agreement is a legal limitation upon the sovereignty of the contracting parties. It is therefore consistent for them to believe that the League of Nations is a legal person able, legally, to

³⁵ Records of the First Assembly, Plenary Session, Annex to the 10th Meeting, pp. 210-211.

control the actions of its members in certain specified matters. If such be the assumption, there can be no doubt that the final judgment as to the location of sovereignty in the mandated territories should be given to the League. For, according to this assumption, not only can sovereignty not reside in the mandatory Power, but the mandatory State itself cannot be viewed as a sovereign State; in fact, under modern conditions of international relations, there can be no sovereign State at all.

Thus Professor Redslob, in a recent work, attempts to establish the legal supremacy of the League over its component members by comparing it with the various kinds of associations of States, and a number of auxiliary arguments.³⁶ His interpretation of the various articles of the Covenant of the League leads him to conclude that the League is a kind of a confederation³⁷ of States which has even the right to declare war.³⁸ Besides the specific powers mentioned in the Covenant, the League possesses collateral powers, among which Professor Redslob counts the administration of Saar, the City of Danzig, and the control of the administration of the territories under the mandatory régime.³⁹

Speaking in particular of the mandates, Professor Redslob declares that the League of Nations has full control over the administration of the manda-

³⁶ *La Théorie de la Société des Nations*, 1927. See especially part 2, chs. i and ii.

³⁷ *Ibid.*, pp. 23-24.

³⁸ *Ibid.*, p. 46.

³⁹ *Ibid.*, First Part, ch. iii.

tory Powers.⁴⁰ It has even the right to revoke a mandate⁴¹ or to replace it,⁴² for if the League is to control effectively the administration of mandated territories, it must, of necessity, also possess the right to revoke a mandate. Assuming these contentions to be correct, it follows, as a direct consequence, that the League of Nations is sovereign over the mandated territories.⁴³ Similar views are also held by a number of German writers, of whom may be mentioned Dr. Moritz Bileski,⁴⁴ Professors Schucking and Wehberg,⁴⁵ and others.⁴⁶

However, even this theory seems to be unacceptable. There is no denying that the League of Nations is a legal person in possession of rights and duties and that the Council of the League is given and enjoys wide powers as regards mandated territories. But, whether the League is capable of possessing

⁴⁰ Ibid., Sec. 28.

⁴¹ Ibid., Sec. 29.

⁴² Ibid., Sec. 31.

⁴³ Du moment que la Société des Nations, par son droit de reprise et de réinvestiture, a le moyen de disposer du mandat, en d'autres termes, du moment qu'il lui appartient de dispenser l'autorité dans la territoire et d'y établir le maître de son choix, bref, du moment qu'elle y est la source de tous les pouvoirs, il faut conclure qu'elle y détient la domination suprême, la souveraineté. Ibid., pp. 196-197.

⁴⁴ Moritz Bileski, "Das Mandat des Volkerbundes" in *Zeitschrift, für Völkerrecht*, 1923. "Die Souveranität liegt vielmehr beim Völkerbund selbst," p. 66. Dr. Bileski seems to be the only writer to think that the Principal Allied and Associated Powers never possessed any sovereignty over the mandated territories. See Ibid., p. 70.

⁴⁵ Schucking and Wehberg: *Die Satzung des Völkerbundes*.

⁴⁶ Dr. Wolfgang Schneider, *Das völkerrechtliche Mandat*; Dr. Manka Spiegel, *Das völkerrechtliche Mandat und seine Anwendung auf Palästina*.

legal sovereignty over any territory is a question that necessitates going deeper into its nature and very essence.

The Preamble of the Covenant reads as follows: "The High Contracting Parties in order to promote international peace and security and to achieve international peace and security, agree to this Covenant of the League of Nations." The sphere of activity of the League is wide. It comprises administrative and supervisory duties. Yet the powers given to the League are specific, delegated powers; it enjoys no inherent powers. The League is, besides, a permanent institution that meets periodically to hold conferences of representatives of the Member States at which questions of interest to the whole body are discussed and agreed upon. These delegates represent the official class of each government, with a total absence of popular representation. It seems, therefore, that, though the League is, in many ways, similar to a confederation of States, the power it is able to exercise over its members is moral rather than legal.⁴⁷ The League lacks many of the characteristics that go to the making of a State. It has neither territory nor a population, nor a force to sanction decisions it may make. Thus, though it may have been convenient to entrust the League with the

⁴⁷ "The responsibility of the League could only occur in respect of the populations who are under mandatory rule. But it is difficult to see in what way this responsibility would be organized, or what measures could enforce it. *Qui custodiet custodes?* The responsibility of the League before the public opinion of the civilized world will in point of fact be a moral one." Hymans, p. 17.

exercise of certain sovereign powers, the League itself cannot, juristically, be conceived of as sovereign, or as capable of holding sovereignty.⁴⁸

But, even if the theory that the League of Nations is a legal person, that is, capable of holding sovereignty, were logically and legally acceptable, it could not be said that it possesses sovereignty over the mandated territories. For the League was not even consulted when the mandates were distributed by the Principal Allied and Associated Powers. And it seems that this distribution was meant to be definite, for no provision was made for the revocation of a mandate. Although the facts just mentioned have no bearing on the question of sovereignty, which is mainly a question of fact⁴⁹ and not of origin, the fact that, if the League were to withdraw a mandate from one of the mandatories, it would be unable to enforce its decision, would seem to take away from it the essential powers of sovereignty. It is hardly conceivable, furthermore, that a unanimous vote, which would be necessary in such a case, could be obtained in the Council.

In practice, the League has been able to exercise its supervision over the administration of the mandated territories because its actions, in the case of mandates, as is true also of all its activities, have been accomplished tactfully and with full consideration for the sovereignty of the mandatory Powers.

⁴⁸ See an article "What is the League of Nations?" by P. E. Corbett. *The British Yearbook of International Law*, 1924.

⁴⁹ See Willoughby, p. 173.

As was said by Lord Balfour: "Mandates were not the creation of the League, and they could not in substance be altered by the League. The League's duties were confined to seeing that the specific and detailed terms of the Mandates were in accordance with the decisions taken by the Allied and Associated Powers, and that in carrying out this mandate the mandatory Powers were under the supervision—not under the control of the League."⁵⁰

If neither the Principal Allied and Associated Powers, nor the League of Nations, are sovereign in the mandated territories, it is possible that the mandatory Powers themselves hold the sovereignty over the territories which they rule? M. Henri Rolin, writing in 1920, after analyzing the provisions of the Covenant of the League and the Treaty of Versailles with regard to mandated territories, came to the conclusion that the sovereignty possessed by the Principal Allied and Associated Powers was transferred in full to the mandatory Powers.⁵¹ The supervisions reserved for the League, as provided for in Article 22 did not imply the transfer of any portion of the sovereignty to the League of Nations.⁵²

⁵⁰ *Official Journal*, June, 1922, p. 547.

⁵¹ *Le système des mandats coloniaux*, M. Henri Rolin. *Revue de droit International et de Législation comparée*, 3d series, 1920. "La souveraineté appartient donc au mandataires quelles que soient les modalités des mandats," p. 350. Exception is made in the case of the A mandated territories where sovereignty is divided between the Mandatory and the territory it governs, p. 548.

⁵² L'article 22, nous l'avons vu, n'implique le transfert à la Société des Nations d'aucune parcelle de cette souveraineté. *Ibid.*, p. 347.

Professor Guilio Diena, who, because of being an Italian, claimed to be able to discuss the juridical character of the mandates with greater objectivity than can French or British writers, came to a similar conclusion.⁵³ Discarding the theory that the League could hold sovereignty,⁵⁴ or that the sovereignty over any territory, excepting *res nullius*, could be suspended,⁵⁵ he concluded that, in the territories of the A mandates class, the mandatory State enjoys only "high sovereignty"; namely, control of the external relations of such a territory.⁵⁶ In the other territories the mandatory State enjoys full sovereign powers although they are subject to specific limitations because of obligations assumed towards the inhabitants of the territory as well as towards third Powers. But these limitations upon its freedom of action, as well as the fact that it is subject to the supervision of the League, do not amount to an abrogation of the sovereignty of the mandatory over the territory it rules.⁵⁷

⁵³ *Les Mandats Internationaux*, par Guilio Diena, Academic de Droit International. Recueil des Cours, vol. 5, 1924, IV.

⁵⁴ *Ibid.*, p. 238.

⁵⁵ *Ibid.*, p. 241. The theory here referred to is that of Campbell D. Lee that "from the viewpoint of international law the Allied Powers, by creating the mandatory system, have placed the sovereignty of all mandated areas in suspense during the operation of the respective mandates." Lee, *The Mandate for Mesopotamia and the Principle of Trusteeship in English Law*, p. 19, quoted by Quincy Wright, *American Journal of International Law*, 1923, p. 698.

⁵⁶ *Ibid.*, p. 242.

⁵⁷ Et alors, il faut bien reconnaître que c'est le mandataire lui-même qui en possède la souveraineté. Certes dans l'exercice de celle-ci, le mandataire ne pourra pas agir avec toute liberté; il

Analysis shows, however, that, of all theories regarding sovereignty in a mandated territory, the theory that the mandatory State possesses it is the least sustainable. For such a theory destroys at once the whole foundation on which the mandates system is built. It will be remembered that the system was adopted by the Supreme Council as a compromise after all parties had agreed to the principal of "no annexations." Since then no Mandatory has claimed to possess sovereignty over a mandated territory. Even the Union of South Africa, the Mandatory of the territory of South West Africa, which, in a treaty with Portugal, has used the phrase "possesses sovereignty" with regards to itself, conceded before the Mandates Commission that the Union of South Africa had not annexed the territory of South West Africa nor had it ever tried to annex it.⁵⁸ The Court of the Union, in a case of treason against the Government of South West Africa by an inhabitant of that mandated territory, declared:

devra en effet remplir les obligations qu'il a contractées en assumant un mandat B concernant soit les habitants de ces territoires, soit les États tiers. Mais ces restrictions à sa liberté d'agir et la surveillance qu'exercera sur son administration la Société des Nations, ne souffriront pas à annuler le droit de souveraineté du mandataire sur les territoires objet du mandat qui lui est confié. *Les Mandats Internationaux*, par Guilio Diena. *Recueil des Cours*, vol. 5, 1924, IV, p. 244. For a similar opinion see also Julien Makowsky: "La situation juridique du territoire de la Ville libre de Dantzig," *Revue Generale de Droit International Public*, 1923, pp. 169-222; and T. Baty "Protectorates and Mandates," *The British Yearbook of International Law*, 1921-1922, pp. 109-121.

⁵⁸ Minutes of the Permanent Mandates Commission, 11th Session, p. 91.

“ the Government of South West Africa is not possessed of *majestas* in the full sense of that term; in other words, it is not a sovereign and independent State.”⁵⁹ All the decisions taken by the Council with regard to the national status of the inhabitants of B and C mandated territories, the extension to mandated territories of international conventions, and the title to state lands formerly belonging to the German Government, go to show that the mandated territories were never thought to be under the sovereignty of their respective administrative Powers.⁶⁰

The Permanent Mandates Commission, and especially M. Van Rees, its Vice-Chairman, have continually and consistently fought the acceptance of such a theory. “ If the theory that the mandatory State is the holder of sovereignty a very surprising conclusion would then be reached. For in this case we must inevitably conclude that the mandatory Power will be governing a part of its *own* territory, not by its own sovereign right but rather on behalf of the League of Nations.”⁶¹ If such be the case the territories would be counted among the reparations which Germany was to pay the Entente as a result of the outcome of the war.⁶² So would the manda-

⁵⁹ Quoted by Quincy Wright, “ Status of the Inhabitants of Mandated Territories,” *American Journal of International Law*, April, 1924, p. 307.

⁶⁰ For further discussion of these points see ch. ix, below.

⁶¹ Minutes of the Permanent Mandates Commission, 3d Session, p. 220. Report by Van Rees.

⁶² See Robert Lansing, *The Peace Conference, A Personal Narrative*, p. 157.

tories, in accordance with the ordinary rules of international law, undertake part of the national debt of Germany.⁶³ It was also noted by M. Van Rees that Articles 120 and 127 of the Treaty of Versailles use the following terms "the Governments exercising authority over such territories," and "mandatory Power in its capacity as such," a fact which would indicate that the Mandatory was then understood to be distinct from a sovereign Power.⁶⁴

A number of writers hold the theory that the sovereignty over the mandated areas lies with the inhabitants of those areas. Thus Stoyanovsky, in a book dealing with the theory of the mandates system, after observing that the new notion of sovereignty keeps from the former only the name, and that the concept of sovereignty has been so greatly modified in modern times, that, in practice, it means no more than that the State is accorded that liberty which the individual enjoys in private law among

⁶³ The A mandated territories, however, do share in the Ottoman Public debt. See Treaty of Lausanne, Part II, Sec. 1, Arts. 46-58.

⁶⁴ Van Rees, *Ibid.*, pp. 220-221. Article 120 reads as follows: "All movable and immovable property in such territories belonging to the German Empire or any German State shall pass to the government exercising authority over such territories, on the terms laid down in Article 257 of Par. IX of the present Treaty. . . ." Paragraph 2 of Article 257 reads. ". . . All property and possessions belonging to the German Empire or to the German States situated in such territory shall be transferred with the territories to the mandatory Power *in its capacity as such*, and no payment shall be made nor any credit given to those Governments in consideration of this transfer."

the civilized nations,⁶⁵ concludes that the mandated territories are only deprived of the exercise of their sovereign powers, while the right of sovereignty is theirs by virtue of the principles of nationality and self-determination, which are the foundations of modern international law.⁶⁶ In a similar tone M. Paul Pic declares that the mandated territories belong virtually to the populations or to the autonomous communities. The League of Nations is their protector and family adviser.⁶⁷

From a juristic point of view such a theory cannot be entertained, in spite of the fact that Article 22 provides that the inhabitants of mandated territories shall be governed in accordance with the principle that the well-being and development of such peoples is to form a sacred trust of civilization. How could it be said that these peoples hold sovereignty when, in many cases, they are not even organized so as to form a corporate unit? Even the territory of Iraq, the most advanced, from a governmental point of view, of all mandated territories and which is governed by a constitutional monarchy,

⁶⁵ J. Stoyanovsky, *La Théorie Générale des Mandates Internationaux*, p. 83. Elle la souveraineté—s'approche de plus en plus de la notion de liberté, telle qu'elle est conçue par le droit privé de toutes les nations civilisées.

⁶⁶ *Ibid.*, pp. 83-84. Ce n'est que de l'exercice de droits de la souveraineté—liberté que le peuple sous mandat est provisoirement privé; le droit lui-même, il le possède comme les autres peuples en vertu des principes des nationalité et de libre disposition qui sont à la base du droit international moderne.

⁶⁷ See Paul Pic, "Le régime du mandat d'après le traité de Versailles," *Revue Générale de Droit International Public*, 1923, p. 334.

cannot be said to have sovereignty. For, excepting the relations between Great Britain and Iraq, the latter is still considered by the League of Nations as in every respect a mandated territory.⁶⁸ This is true despite the fact that the organic law of Iraq declares that "Iraq is a sovereign State, free and independent. Its sovereign rights are indivisible and inalienable. Its government is that of a hereditary monarchy and its form representative."⁶⁹

With the conclusion that the mandated territories are not sovereign States and, therefore, cannot hold sovereignty, the possibilities that sovereignty could be located in the Principal Allied and Associated Powers, the League of Nations, the mandatory Powers or the mandated territories separately considered, are exhausted. But it is still possible to hold that sovereignty may lie in a combination of these. The best theory, with such a possibility as its basis, is the one advanced by Professor Quincy Wright, who believes that "there will be a close approach to truth in ascribing sovereignty of mandated territories to the mandatory acting with the consent of the Council of the League."⁷⁰ This theory has especially appealed to, and has been subscribed

⁶⁸ See ch. vii, above.

⁶⁹ See the "Organic Law of Iraq," Introduction, *League of Nations* Doc. C. 412, 1924, VI.

⁷⁰ Quincy Wright, above cited, "Sovereignty in Mandates," *American Journal of International Law*, October, 1923, p. 698. See other articles by same author in *American Journal of International Law*, April and October, 1924.

to by a number of English writers.⁷¹ It is undoubtedly true that the mandated territories are governed by the mandatory Powers with the cooperation of the Council of the League, but to locate sovereignty with the two is to locate it nowhere. In other words, the statement of Professor Wright is true as a description of how the territories under mandates are administered, but it fails to answer the question as to where sovereignty resides. This should not be taken to mean that, in theory, sovereignty over a territory cannot be held by two or more Powers. Such a theory can be entertained and it has been adopted in practice a number of times.⁷² But such a theory, in the case of mandated territories, is untenable, for if the Council possesses the power to control the acts of the Mandatory, the latter cannot be said to be sovereign at all. And, besides, if such a solution be adopted, all the objections which have previously been considered against the theory that the League of Nations or the mandatory Powers possess sovereignty still remain.

Obviously, the problem where sovereignty resides in a mandated territory has been left unsolved by all the theories hitherto considered.

⁷¹ See Corbett, above cited, "What is the League of Nations?" *British Yearbook of International Law*, 1924; and an article "Mandates" by Arnold D. McNair, *The Cambridge Law Journal*, III, 1928, pp. 149-161, No. 2.

⁷² See Frederick C. Hicks, *The New World Order*, ch. xiii, International Administration of Territory.

CHAPTER IX

THE SITUS OF SOVEREIGNTY AND OTHER LEGAL PROBLEMS (CONTINUED)

A possible answer to the question as to where sovereignty resides in a mandated territory, is the denial of need to answer the question at all. It can be claimed, and, in fact, it is so claimed by a great number of writers, that sovereignty, in its internal and external aspects, no longer exists. Some of these writers go so far as to say that the concept of sovereignty, both in fact as well as in law, never had a practical existence. In other words, the modern state, according to these thinkers, is not a sovereign state and never was one. Such being the case, the problem of sovereignty in mandated territory does not present itself, and, therefore, it is sufficient to say that the mandatory Power is legally bound to govern the territory entrusted to it in accordance with the terms of the mandate, such an obligation being the same as similar obligations which the modern state is continually assuming in its international relations.¹

The concept of sovereignty has been subjected to attacks and even abuses from every possible point of view. Suffice it to say that it has become the fashion

¹ See, for example, Alfred Verdross *Die Einheit des Rechtlichen Weltbildes auf Grund des Völkerrechtsverfassung*, and other books by the same author.

to assault the sovereignty of the state, qualify it, diminish it, or even destroy it altogether. We cannot in this study discuss all these views, although it would be an absorbing enterprise.² We are at present interested in the question as to how these theories can solve for us the problem of sovereignty in mandated territories, and we shall therefore limit ourselves to a consideration of these attacks from this single point of view.

Only a few words need be said about such theories as those of Verdross³ or Kelsen,⁴ who believe that states cannot be sovereign because, both in their relations with their citizens and in their relations with other states, they are bound by a universal law. It rests upon the exponents of such theories to prove the existence of such a universal code of law equally binding upon all states, at all times, and then to show how this code is followed in international practice. It is needless to say that the existence of such a code cannot be proven, nor can it be shown that the relations of a state have ever been based on the assumption of its existence. These theories are a modern version of the *jus naturale* of the middle ages, and have long been discarded.

² See article by Professor James W. Garner, "Limitations on National Sovereignty in International Relations," in the *American Political Science Review*, February, 1928, and the many references there mentioned. See also "Political Science at the Crossroads," by Ellen Deborah Ellis, *Ibid.*, November, 1927. The best recent book that deals with the so-called revolt in political science is, *The Pragmatic Revolt in Politics*, by W. Y. Elliott.

³ See above, note 1.

⁴ *Das Problem der Souveranität*, Dr. Hans Kelsen.

More serious attention should be given to the opinions of such writers as MacIver,⁵ Laski,⁶ Krabbe,⁷ and others,⁸ who think that the modern state has lost its full sovereignty as a result of developments within and without the states. The feature common to all these writers is their belief in political pluralism, which declares that the state fulfills only specific functions in the organization of Society, and should have its powers limited to its specific field of activity. There are other corporations in a modern society, it is asserted, which should be put on an equal legal basis with the state. "What we actually see in the modern world is not on the one hand the states, and on the other a mass of unrelated individuals; but a vast complex of gathered unions, colleges, professions, and so forth; and further, that there are exercised functions within these groups which are of the nature of government, including its three aspects, legislative, executive and judicial, though, of course, only with reference to their own members. So far as the people who actually belong to it are concerned, such a body is every whit as communal in its character as a municipal corporation or a provincial parliament." ⁹

⁵ *The Modern State*.

⁶ *The Foundations of Sovereignty*. The most recent statement of Mr. Laski's theories is to be found in his *Grammar of Politics*.

⁷ *The Theory of the Modern State*.

⁸ See *Sovereignty, a Study of a Contemporary Political Notion*, by Paul S. Ward.

⁹ Figgis *Churches in the Modern State*, p. 70. See also "The Law and the State," by Leon Dugit, *Harvard Law Review*, November,

Externally, in the international field, also, the sovereignty or independence of the state has been attacked. Thus, Professor Garner declares that "Whichever view we adopt regarding the legal nature of the Society of States, we are bound to reject the theory that in fact it is nothing more than an anarchy of sovereignties. In its present state of development the absolutist conception of sovereignty, viewed in its external manifestations, is wholly incompatible with the existence of that society and it ought to be abandoned along with that other useless fiction known as the equality of states."¹⁰ Laski's denunciation is much stronger. According to him the notion of an independent sovereign state, on the international side, is incompatible with the interests of humanity.¹¹

It is the author's belief that an acceptance of the concept of sovereignty is not only indispensable for an understanding of the relations of a state with the inhabitants of its territory as well as in its relations with sister states, but that it is also of great practical usefulness.

The juristic system does not view the concept of sovereignty as being something extraneous and foreign to the organized society, imposing, from without, duties and obligations solely for its own aggran-

1917. See a criticism of political pluralism in an article by Professor W. W. Willoughby, "Political Pluralists," in the *Chinese Social and Political Review*, 1926, X, 600-632.

¹⁰ Garner, Article above mentioned, p. 20.

¹¹ Laski, *Grammar of Politics*, ch. ü, pp. 44-89, Sovereignty.

dizement and at its own pleasure. Juristically viewed, the state, as visioned in the abstract, is not necessarily an end in itself. It is not inconsistent with the juristic system to have a society within a given territory organized in such a way that the various functions of government and administration are divided among as many bodies as may be thought fit, each endowed with the necessary powers to enforce its decisions. Neither is it inconsistent for the State to enter into treaties and agreements with other states, by which are incurred obligations and duties. But the state, comprising within this term its territory and the people that inhabit it, and the Government, whatever its form, under which it is organized, must, when abstractly viewed, be considered the final judge as to what is best for its own interests, and be legally free to act according to that judgment. The will of the state must, therefore, be regarded as supreme in its territory. It must be able to enforce its decisions in the interest of the whole community against the interests of any of its parts, as well as to decide conflicts between the various interests within itself. Also the sovereignty of the state must not be regarded as impaired by any will or power outside of its territory. In short, the State must necessarily be free and independent in its international relations.

The fact that, in practice, states, both in their relations with their citizens and in their relations with other states, do act in accordance with certain prin-

ciples, and avoid doing certain things, does not detract from the fulness of their sovereignty and independence. The juristic system, with the concept of sovereignty which lies at its basis, need not be considered as a hindrance to the development of international cooperation. As said above, the state may enter into any number of conventions, carrying with them all sorts of obligations, and it is the desire of the positivist jurist as well as of others that the interests of the states should be interdependent and mutually beneficial to such a degree that it will be inexpedient for any one state to break its agreements or act in any way contrary to the interests of the other states. Yet, legally speaking, the state cannot forego its right to have the final judgment as to what are its interests and what are the means best to guard them.¹²

While the juristic system in its fulness is valid as to the various relations of the modern sovereign state, it does not operate to exclude possible exceptions. In other words, the juristic view does not lose strength and value if and when it is found not to be wholly applicable under certain conditions. This ob-

¹² "Historically viewed, the concept of state sovereignty, which is responsible for the doctrine of non-intervention, has been, by preventing international disputes, of the greatest benefit to the State. The respect which one nation pays to the independence of another has covered many a sin which otherwise would have been the cause of intervention and war." These thoughts were expressed by Professor W. W. Willoughby in a course of lectures on Ethical Political Philosophy, which he delivered at the Johns Hopkins University, 1928-1929. See also *State Sovereignty and International Law*, by Johannes Mattern.

servation brings us back to the question of the location of sovereignty in the territories under mandatory administration. It has been seen that the concept of sovereignty is indispensable in the operation of the modern state. Yet, in a mandated territory, it has also been seen that sovereignty does not reside in the mandated territory itself, nor in the mandatory Power, nor in the Principal Allied and Associated Powers, nor in the League of Nations, nor in any possible combination of these. Where then, does sovereignty reside? We are forced to the rather unsatisfactory conclusion that this question cannot be answered, nor does it appear likely that, in the near future, if ever, the question will be answered. In other words, the question as to the situs of sovereignty in the mandated territories is not apt to be definitely decided one way or another for fear that, whatever the decision may be, it will throw into confusion the whole working of the mandates system. The mandates system is a case of "*sui generis*" in international law. Ordinarily, a clear decision as to the situs of sovereignty in a given territory helps to clarify the practical working of the government of that territory. In a mandated territory, however, it will probably tend to disarrange matters to such a degree that the whole system may be destroyed. It can therefore be said that, so far as the territories under mandate are concerned, the question of the situs of sovereignty will, for practical reasons, not be pushed to a final and decisive

issue. As matters now stand this uncertainty is the greatest asset to the mandatory system. This assertion is strange enough to demand further elucidation.

When studying the system of mandates under the League of Nations one must always keep in mind the time it was created, the political background and circumstances at the time, and who were its creators. With this in mind many things which at first sight seem puzzling become understandable.

The acceptance, in principle, of the mandates system took place on January 30, 1919, when the famous Smuts' Resolution was adopted by the Supreme Council.¹³ This resolution was based upon a compromise between the claims of the British Dominions, which stood for full annexation of the German colonial territories occupied by them during the war, and the views of President Wilson, who insisted upon a fulfilment of the promises made during the war, that no new territory should be annexed by the victorious powers, and that, in the disposal of enemy colonies, the principle of self-determination should be followed. A compromise, by its very nature, is the precursor of logical and practical difficulties. Of these, its Anglo-Saxon sponsors were not afraid, as they relied upon experience to reconcile and smooth them out. Therefore, the Principal Allied and Associated Powers selected the Mandatories to govern these territories on behalf of the League of Nations in accordance with certain principles laid

¹³ See ch. ii, above.

down in Article 22 of the Covenant, itself a typical child of the Anglo-Saxon mind. Who is going to be sovereign in these territories? Nothing was said about it in any document. The mandatory States were to be given power to administer the territories so that they might not be without political rule, but, for the rest, experience was relied upon to decide.

Such a condition was theoretically illogical, but practice seems to have demonstrated the value of the decision. Since the adoption of the mandates system many problems have arisen whose decision would ordinarily have involved the use of sovereign powers, and, incidentally, a decision as to its location. But the problems were settled without involving the concept of sovereignty. A few illustrations will show this. At the same time these illustrations will assist us in understanding the actual working of the mandates system.

The question of the national status of the inhabitants of the mandated territories was presented to the Mandates Commission during its first session, held in October, 1921,¹⁴ whereupon the Council adopted a resolution "to request the Chairman of

¹⁴ Minutes of the Mandates Commission, 1st sess., p. 41. The question of nationality became first acute in the territory of South West Africa, where the German colonists formed a large percentage of the white population, and who, furthermore, intended to remain there. The Government of the Union of South Africa found it impracticable to have such a large foreign element in the territory and has asked for a special ruling by the Council to allow it the summary naturalization of all the Germans. See Annex 6, Minutes of the 2nd session of the Mandates Commission.

the Mandates Commission,¹⁵ and two of his colleagues to form a sub-committee for the purpose of seeking further information on the question of the nationality of the inhabitants of B and C mandated areas."¹⁶ This sub-committee interviewed a number of officials from the mandatory Powers and sounded their opinion as to this question. In general, they agreed that the mandate in itself does not affect the nationality of the inhabitants of a mandated territory, and that this status is different from that of inhabitants of colonies.¹⁷ At its Eighteenth Session,

¹⁵ Marquis Alberto Theodoli, of Italy, former Under-Secretary of State of the Colonial Ministry, was elected Chairman of the Commission at its 1st session, and has continued in that capacity ever since.

¹⁶ *The Official Journal*, December, 1921, p. 1133. The question of nationality in the A mandated territories did not come up before the Commission. It was understood that inhabitants of these territories are or were to become nationals of the territory they inhabited. See an article by Hon. Norman Bentwich, Attorney General of Palestine, "Nationality in Mandated Territories detached from Turkey," *British Yearbook of International Law*, 1926, pp. 97-110.

¹⁷ Report submitted to the Council of the League of Nations by Marquis Alberto Theodoli, Chairman of the Permanent Mandates Commission, on behalf of the sub-committee appointed to collect information upon the question of nationality of the inhabitants of B and C mandated areas. League of Nations Doc. C 54(a) M 45, 1922. See also *Official Journal*, June, 1922, Annex 340. Of special importance in connection with the subject under discussion are the views expressed by the Belgian Government in a memorandum which appeared as Annex 6 to the document prepared by the Marquis Theodoli, "The nationality of the individual is the bond which makes him a dependent of a particular state. By Article 119 of the Treaty of Versailles this bond no longer exists between the natives of the Ruanda-Urundi region and the German Empire. Neither does such a bond exist between these natives and a hypothetical Ruanda-Urundi State, or between them and the five Principal Allied and

in May, 1922, after having read the Theodoli Report, the Council adopted a further resolution requesting "the Permanent Mandates Commission to examine this question during its coming session with a view to submitting to the Council proposals for a suitable solution of the matter."¹⁸

Having received the requested recommendation from the Mandates Commission,¹⁹ and having discussed it fully at its Twenty-Fourth Session, the Council adopted the following resolution:²⁰

The Council of the League of Nations,

Having considered the report of the Permanent Mandates Commission on the national status of the inhabitants of territories under B and C Mandates.

In accordance with the principals laid down in Article 22 of the Covenant:

Resolves, as follows:

(1) The status of the native inhabitants of a mandated territory is distinct from that of the nationals of the Mandatory Power and cannot be identified therewith by any process having general application.

(2) The native inhabitants of a mandated territory are not invested with the nationality of the Mandatory Power by reason of the protection extended to them.

(3) It is not inconsistent with (1) and (2) above, that individual inhabitants of the mandated territory should volun-

Associated Powers, or the League of Nations. . . . Regarding the matter—of nationality—solely from a legal aspect, therefore, it would appear that it is between the Belgian State and the native peoples that the relations which determine nationality would be established." *Ibid.*, p. 22.

¹⁸ *Ibid.*, p. 524.

¹⁹ *Ibid.*, June, 1923, pp. 567-568.

²⁰ *Ibid.*, p. 604.

tarily obtain naturalization from the Mandatory Power in accordance with arrangement which it is open to such Power to make, this object, under its own law.

(4) It is desirable that native inhabitants who receive the protection of the Mandatory Power should in each case be designated by some form of descriptive title which will specify their status under the Mandate.

The natives of these territories thereupon became known as "administered" or "protected" persons under mandate.²¹ At its Twelfth session, the Mandates Commission, in its report to the Council, stated that it "would be glad to know what action the mandatory Powers have taken on the Council's resolution of April 23rd, 1923, regarding the national status of the inhabitants of territories under B and C mandates, and particularly on the fourth paragraph of the resolution."²² The Council acted upon this request of the Mandates Commission and asked the mandatory Power to furnish it with in-

²¹ The South-African Government was given permission by the Council to confer British Nationality on the inhabitants of South-West Africa, possessing German nationality, provided that:

"(a) Every such inhabitant shall have the right to decline British nationality by a declaration made in such conditions as may be required;

"(b) Any person exercising the right shall nevertheless be entitled to remain in the territory and shall not be disturbed or molested on any pretext whatsoever in consequence of the exercise of such right."

See *Ibid.*, pp. 603 and 659.

²² Minutes of the 12th Session of the Mandates Commission, p. 198.

formation as to the action taken by them on the Council's resolution of the above date.²³

With the same principle in mind, and again emphasizing the distinct legal personality of the mandated territories, the Council passed resolutions regarding the state lands in mandated territories, regarding the application of special international convention to the mandated territories, and regarding loans, advances and the investment of public and private capital in the mandated areas.

On June 7th, 1926, the Council endorsed the opinion expressed by the Permanent Mandates Commission at its Fourth session on the question of State Domains,²⁴ which Commission had adopted the following text as the expression of its opinion:

The mandatory Powers do not possess, in virtue of Articles 120 and 257 (paragraph 2) of the Treaty of Versailles, any right over any part of the territory under mandate other than that resulting from their having been entrusted with the administration of the territory.

If any legislative enactment relating to the land tenure should lead to conclusions contrary to these principles, it would be desirable that the text should be modified in order not to allow any doubt.²⁵

²³ *Official Journal*, April, 1928, p. 375. At the time of writing, March, 1929, there is no record available of any replies by the Mandatories.

²⁴ *Ibid.*, July, 1926, p. 867.

²⁵ Report of the work of the 4th Session of the Mandates Commission to the Council of the League of Nations, p. 3. See also minutes of the above session, Annex "Memorandum by the legal section of the Secretariat on the system of land tenure in the mandated territories."

The Council also approved a proposal by the Commission to extend to the mandated territories, the benefit of special international conventions entered into by the mandatory Powers with other Powers, "if circumstances render such extension possible and expedient and if the provisions of the international agreements are consistent with the stipulations of the Covenant and the Mandate."²⁶

Of special importance in this connection are the treaties concluded between the United States of America and France extending to the former the rights and benefits enjoyed by Members of the League of Nations, under the articles of the mandates as well as for the application of extradition treaties and conventions to these territories. Professor Quincy Wright, commenting upon these treaties, declares that: "From the standpoint of international law the most important feature of these treaties is: (1) the assumption that American consent is necessary for French administration of the mandates, and (2) the assumption that France can grant permanent rights with respect to the territories."²⁷ One may add that these two conclusions do not, by any means, clarify the legal status of a mandatory in international law. It rather complicates the matter in the degree to which political factors interfere in and influence the working of the mandates system.²⁸

²⁶ *Official Journal*, October, 1926, p. 1363.

²⁷ *American Journal of International Law*, October, 1924, p. 787.

²⁸ See article by Professor Quincy Wright, in the *Michigan Law Review*, May, 1925.

Finding that the economic development of the mandated areas was handicapped by the hesitation of private capitalists and even mandatory Powers to invest capital in mandated areas, the Council, again on the proposal of the Mandates Commission, declared "that the validity of financial obligations assumed by a mandatory Power on behalf of a mandated territory . . . are in no way impaired by the fact that the territory is administered under mandate."²⁹ It further declared that no cessation or transfer of a mandate could take place unless the Council was assured that such financial obligations would be carried out and all rights acquired under its administration respected.³⁰

The question of sovereignty in a mandated territory has twice arisen in connection with the administration of the Territory of South West Africa. Once it arose in its internal aspect, namely, in the relation between the administration and one of the inhabitants of the territory; the second time, in its external aspect, namely, in the relation between the Union of South Africa and an external Power.

²⁹ *Official Journal*, October, 1926, p. 1363.

³⁰ In the A mandate there is a special provision to that effect. Article 19 of the Syrian Mandate reads as follows: "On the termination of the Mandate, the Council of the League of Nations shall use its influence to safeguard for the future the fulfillment by the Government of Syria and of Lebanon of the financial obligation, including pensions and allowances, regularly assumed by the administration of Syria, and of Lebanon, during the period of the Mandate." See also Article 28 of the Palestinian Mandate.

The question as to the character of the relation between the Mandatory and the inhabitants of a territory subject to its mandate arose in the case of *Jacobus Christian v. Rex*, decided by the Appellate Division of the Supreme Court of South Africa, November 30, 1923.³¹

Mr. Jacobus Christian was one of the leaders of the rebellion of 1922, generally known as the Bondelzwarts Affair, and was indicted and convicted of high treason. The indictment, in part, read that "he was an inhabitant of the mandated territory and owed allegiance to His Majesty King George V in his Government of the Union of South Africa as the Mandatory thereof under the mandate conferred by the Treaty of Versailles upon His Britannic Majesty for and on behalf of the said Government." The defendant claimed that he could not be held guilty of high treason because high treason could be committed only against a sovereign Power, and that a Mandatory does not possess full sovereignty in a mandated territory. The Court, however, sentenced Mr. Christian to five years imprisonment, and reserved the question of law, that is, whether the crime of which Mr. Christian was convicted really constituted treason, for consideration by the higher court. The question of sovereignty in a mandated territory was thus brought to the Supreme Court of a Mandatory.

³¹ See *British Yearbook of International Law*, 1924, p. 227, and *ibid.*, 1925, pp. 211-219. See also Quincy Wright, "Status of the Inhabitants of Mandated Territories," *American Journal of International Law*, April, 1924.

The Supreme Court of South Africa, in its decision, examined the legal position of South West Africa and its Government under the Treaty of Versailles.³² The Court declared that the Principal Allied and Associated Powers, after having made the appointment of Mandatories, passed the matter on to the Council of the League, thus disappearing as a future factor in mandatory affairs. Further, that the relation between the Mandatory and the Council is not that between agent and principal, and that the supervisory authority of the Council is of an undefined nature and extent. However, Chief Justice Innes concluded: "It cannot be said that the Government of South West Africa, by which is meant the Government of the Union of South Africa, is possessed of majestas in the full sense of that term; in other words, it is not a Sovereign and independent State. But majestas operating internally may by our law be sufficient to found a charge of high treason, in spite of the fact that its external operation is considerably curtailed. And when the internal characteristics of sovereignty are present, where a community is organized under a government which has the power of making laws and enforcing them, the majestas adequate for the above purpose must

³² Excerpts from the elaborate opinion of the Chief Justice Innes and Associate Justice Kotze are given in the *British Yearbook of International Law*, 1924, pp. 211-219. See also article by E. L. Mathews, K. C., "International Status of Mandatory of League of Nations, High Treason against Mandatory Authority," in the *Journal of Comparative Legislation and International Law*, Series III, VI, 1924, pp. 245-251.

reside either in the government of that community or in some other government to which it is subject. . . . The League is not a State, nor do the Principal Powers constitute one. That government—of the Union of South Africa—has by virtue of treaty obligations consented to certain limitations of its powers. But these limitations are not inconsistent with the possession of majestas within its own territory, and such majestas which formerly resided in the German Government must now reside in the new authority. There is no other state or power in which it can be vested. In case of an attack with hostile intent by an inhabitant upon the Government of South West Africa it would be impossible to charge treason against the League of Nations or against the Principal Allied and Associated Powers; it could only be charged against the Mandatory.”³³

³³ Ibid., p. 215. But is the Government of the Union of South Africa itself a sovereign State? Can it be said that the status of the Union, which is a Dominion within the British Empire, is consistent with the possession of sovereignty by its Government in the capacity of Mandatory? The Chief Justice answered the question in the following manner: “Finally, it is unnecessary to institute a comparison between the position of a mandated territory and the position of a Dominion; though such an investigation would raise interesting questions as to how far the Dominions, thanks to the elasticity of the British Constitution, have progressed along the path of nationhood. The international status of the Union is clearly consistent with its possession of majestas by its Government in the capacity of Mandatory. For the Union of South Africa is not only a signatory to the treaty but is a Member of the League of Nations, and as such an independent unit in the Assembly. It has therefore an international status which upon the selection of the Union Government to administer South-West Africa entitled that Government as Mandatory to claim the attribute of majestas to the same extent as any other power acting in the same capacity.” Ibid.

The question of sovereignty viewed from the external aspect, also arose in connection with an agreement between the Union of South Africa and the Government of Portugal regarding the frontier between Angola and South-West Africa. The second paragraph of the preamble of the Agreement reads as follows:

And whereas under a Mandate issued by the Council of the League of Nations in pursuance of Article 22 of the League of Nations, the Government of the Union of South Africa, subject to the terms of the said Mandate, possesses sovereignty over the Territory of South-West Africa, lately under the sovereignty of Germany. . . .³⁴

It was the opinion of the Commission that the term "possesses sovereignty" did not rightly express the relations existing between the mandatory Power and the territory placed under its mandate. The correct term to be used should have been "exercises sovereign powers."³⁵ The Commission felt it to be its duty to bring this to the notice of the Council, for it could not let the opportunity pass without expressing, in clear terms, its opinion that a Mandatory is not in possession of sovereignty over a mandated area.

However, the Council avoided expressing a positive opinion as to where the sovereignty does rest. It merely instructed the Secretary-General to forward, for the information of the Mandatory Power

³⁴ Minutes of the Permanent Mandates Commission, 10th Session, p. 22.

³⁵ *Ibid.*, Annex 9, p. 182.

concerned, the Government of the Union of South Africa, the passage of the Report of the Mandates Commission dealing with the use of the phrase "possesses sovereignty."³⁶ The Government of the Union of South Africa refrained from commenting upon this passage of the report.³⁷ But the matter did not end there. At the Eleventh session, during the examination of the annual report of the administration of South-West Africa for the year 1926, the Commission again raised the question as to the legal relation between the Union and South-West Africa. A lengthy discussion followed in which Mr. Smit, the accredited representative of the Government of the Union of South Africa, declared that "sovereignty in a mandated territory was dormant, and that, while that state of affairs continued, the Government of the Union of South Africa exercised and possessed that sovereignty on behalf of a third party undefined."³⁸ The Commission decided to refer this question again to the Council. This it did in its Report to the Council on its work of the eleventh session.³⁹ It also brought to the attention of the Council the rather broad interpretation given by the Prime Minister of the Union to the decision of the Supreme Court of the Union of South Africa in the case of *Jacobus Christian v. Rex*, above discussed, when he declared in Parliament that "the majestas

³⁶ *Official Journal*, April, 1927.

³⁷ Minutes of the Permanent Mandates Commission, 11th Session p. 87.

³⁸ *Ibid.*, p. 92.

³⁹ *Ibid.*, Annex 6.

or sovereignty over South-West Africa resides neither in the Principal Allied and Associated Powers, nor in the League of Nations, nor in the British Empire, but in the Government of the Union of South Africa.”⁴⁰

This time, the Council, speaking through M. Bee-laerts Van Blokland, its rapporteur, emphasized the fact that the legal relations between a Mandatory and a territory subject to its mandates are not those as between a sovereign Power to one of its territories. The Rapporteur said, in part: “ It seems to me that, from all practical points of view, the situation is quite clear. The Covenant as well as the other Articles of the League of Nations, the mandates themselves, and the decisions already adopted by the Council on such points as the National Status of the Native inhabitants of mandated territories, the extension to mandated territories of international conventions which were applicable to the neighboring colonies of the Mandatory Powers and that of State lands formerly belonging to the German Government, all have had their part in determining or in giving precision to the legal relationship between the mandatories and the territory under their mandate. The relationship, to my mind, is clearly a new one in international law, and for this reason the use of some of the time-honored terminology in the same way as previously is perhaps sometimes inappropriate to the new condition.”⁴¹

⁴⁰ Ibid., p. 204.

⁴¹ *Official Journal*, October, 1927, p. 1120.

At its Thirteenth session the Chairman of the Permanent Mandates Commission was able to tell the members of the Commission that the Government of the Union of South Africa had noted the observations made on the question of sovereignty by the Netherlands' representative, and, in fact, had stated that it had no comment to offer in view of the opinion expressed by the Council on this subject.⁴²

The right of petition possessed by the inhabitants of mandated areas, and the provision in all the mandates that all disputes between a Mandatory and another member of the League of Nations relating to the interpretation of the application of the provisions of a mandate should be submitted to the Permanent Court of International Justice, should be mentioned in this connection, because both are peculiar to the mandates system and qualify the exercise of sovereign powers by a Mandatory. But, as has been shown in an earlier chapter, no undue interference in the internal affairs of a Mandatory is to be expected from these two sources.⁴³

The right of appeal from the Supreme Court of a mandated territory to a high court of the mandatory Power, as well as the responsibilities of the Mandatory to the inhabitants of the territory subject to its mandate, were also decided upon in the case of *Jerusalem-Jaffa District Government v. Suleiman Murra*, decided by the Judicial Committee of the Privy Council on appeal from the Supreme Court of

⁴² Minutes, p. 11.

⁴³ See above, ch. v.

Palestine.⁴⁴ The facts of the case were as follows: Owing to scarcity of water in the City of Jerusalem, during the summer of 1925, the High Commissioner promulgated an ordinance expropriating the Urtas Springs in the vicinity of Jerusalem, for the purpose of supplying water to the City of Jerusalem, with certain provisions for compensation. There being no legislature in Palestine, the High Commissioner was empowered by a Palestine Order in Council to promulgate "such ordinances as might be necessary for the peace, good order, and government of the country, and are not inconsistent with the Mandate."⁴⁵

Suleiman Murra and other villagers, inhabitants and landowners of Urtas, applied for an injunction to restrain action under this Ordinance. The Supreme Court of Palestine, sitting as a High Court, held that the Ordinance was *ultra vires* and void, and granted the injunction asked for, but allowed the operation of the Ordinance pending an appeal to His Majesty in Council.⁴⁶ The decision of the Supreme Court was based on the ground that the Urtas Ordinance was in violation of Article 22 of the Mandate for Palestine, according to which the Mandatory was responsible "for the safeguarding of the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion" since the com-

⁴⁴ Law Reports, Appeal Cases, 1926, pp. 321-330.

⁴⁵ Official Summary of the Palestine Order in Council which is also the Draft Constitution for Palestine. See Loder, App. 4.

⁴⁶ The Palestine Order in Council provided for the possibility of such an appeal. Appeal Cases, p. 322.

pensation provided for by this Ordinance was insufficient.

Viscount Cave, Lord Chancellor, in his opinion, first answered affirmatively the question as to whether an appeal would lie from the Supreme Court of Palestine to His Majesty in Council. This competence the Judicial Committee of the Privy Council acquired from the Foreign Jurisdiction Act of 1890 "which applies to every foreign country in which by treaty, capitulation, grant, usage, sufferance, or other lawful means His Majesty had jurisdiction, and provides that His Majesty may exercise any such jurisdiction in the same and in as ample a manner as if he had acquired that jurisdiction by the cession or conquest of territory."⁴⁷

On the second point, the merits of the case in question, it was their lordships' opinion that the construction put by the Supreme Court upon Article 22 was not justified by its terms; for the provision that the Mandatory shall be responsible for the safeguarding of the civil and religious rights of all the inhabitants "does not mean, as the Supreme Court recognized, that all the civil rights of every inhabitant of Palestine which exist at the date of the Mandate are to remain unaltered throughout its duration, for if that were to be a condition of the Mandatory's jurisdiction, no effective legislation could be possible."⁴⁸ The decision was therefore in favor of the Appellants.

⁴⁷ Ibid., pp. 323-324.

⁴⁸ Ibid., p. 328.

From the rather numerous list of illustrations drawn from the colorful history of the Mandatory system we come to the conclusion that no decision made either by the Council of the League of Nations, or by the municipal courts of a Mandatory, or by an International Court, has decided in a definite manner the question of the location of sovereignty. Though the subject has been touched upon and discussed a number of times by bodies presumably able to decide the question its decision has been tactfully avoided. The question as to the location of sovereignty is thus still left unsolved, and may remain so for an indefinite period.

But occasion may arise when a decision of this issue can no longer be avoided. Such would be the case if a territory, for some reason or other, should have to be transferred from one Mandatory to another Power. Although such a thing is not likely to happen, it is a possibility and therefore deserves to be discussed. There is no provision for the procedure to be followed in effecting the transfer of a mandated territory. A mandate can come to an end in five different ways: through the termination of a mandate; by successful rebellion of the territory against the Mandatory; by the Mandatory surrendering the Mandate; by the giving up of the Mandate by political barter on a *quid pro quo* basis; or by taking away a mandate from a Mandatory on account of its failure to act in accordance with the terms of a mandate.

Possibly two can be at once ruled out. No mandated territory is strong enough to defeat, on the battlefield, any mandatory Power. The most formidable rebellion up to the present has taken place in Syria, but, although, at one time, it reached rather wide dimensions, it was bound to fail.⁴⁹ Likewise, the possibility of a Mandatory giving up its mandate without compensation has to be ruled out. Though some territories have proved rather burdensome to the mandatory Power, it is inconceivable that a Mandatory will fail to perform its international obligations and thus forfeit lands for the acquisition of which the Mandatories fought hard during and after the war. The loss of prestige and national pride which such a step would entail is in itself enough to prevent any agitation towards that end.⁵⁰ Renunciation of a Mandate by a Mandatory without the assent of the Council would be contrary to the general principle of International Law which forbids the unilateral termination of international agreements.⁵¹

The most natural way for a mandate to end will be when the inhabitants of a territory have reached a stage in the development of their civilization which will enable them to stand by themselves under the

⁴⁹ The Permanent Mandated Council devoted one whole session to the question of the Syrian rebellion. See Minutes of the 8th Session.

⁵⁰ The agitation to abandon a mandate is greatest in the French Chamber of Deputies, which expresses itself strongly against the continued stay in Syria. See *Current History*, February, 1929, p. 877.

⁵¹ See Quincy Wright, "Sovereignty of the Mandates," *American Journal of International Law*, 1923, p. 700.

strenuous conditions of the modern world. The procedure, under such circumstances, would be the entry of that country into membership of the League of Nations, upon a basis of legal equality with the other Members. Iraq, it seems, will be the first to be graduated from the mandates system into the League of Nations. The new Anglo-Iraq Treaty provides for its entry into the League in 1932.⁵² Syria will, in all probability, be the next to follow. Of the rest, no definite period can be set, since the guidance of them by the advanced nations will be necessary for a long time to come. The question whether, for example, a B mandate may, after a number of years, be transferred to the A category, as well as to how, in such a case, this should take place, is hard to answer. It is, however, worthy to be noted that the phrase of the Covenant "until such time as they are able to stand alone" is mentioned only in connection with A mandates.

Discussions have appeared in the newspapers, purporting to come from official or semi-official sources, which predict that some territory under mandatory administration will change hands as a result of political bargaining. The territories most talked of have been Syria, in the Near East, and Tanganyika, in East Africa. Such a transaction upon its face would be condemnable, for, in the first place, the territories under Mandate are not the property of the Mandatories, and, therefore, are not

⁵² Text of Treaty, see the *Near East and India*, December 22, 1927.

amenable to such a transfer; and, in the second place, a Mandatory can hardly be said to perform its duty as a Mandatory if it even entertains such a possibility. One can therefore safely say that barter will not be of the form by which a mandate will terminate. The fact that the assent of the Council will be necessary to such a transfer is a further assurance against an attempt to bargain away the rights of a people under a mandate.⁵³ But, even if the Council should agree to a transfer based on political bargaining there is the possible intervention of the Assembly and of the United States to consider. The opinion of these two bodies is bound to exert a deciding influence with regard to any future change of status of a mandated territory.

There is, then, left the possibility that a mandate may terminate by the taking away of a territory from a Mandatory by reason of the latter's failure to perform its obligations. In private law a trustee may be removed for cause,⁵⁴ as, for example, for negligence or wilful breach of trust, or when the relationship between the trustee and beneficiary have become hostile. One might be able to point to cases where a Mandatory has acted adversely to the interest of the people of the mandated territory, or allege that the relations between the Mandatory and

⁵³ For if a country is willing to assume a Mandate and compensate the Mandatory, in one way or another, for it, it is *prima facie* evidence that it intends to administer the territory for its own selfish benefit.

⁵⁴ See Bouvier III, under word "trustee."

the inhabitants of the mandated territory have become so hostile as to prevent harmonious cooperation between the two, but it is difficult to see how a Mandatory could be forced to surrender a Mandate against its own will. The League of Nations has no physical means to enforce its decisions, and it is doubtful whether the League of Nations would continue long to exist if it should even advise the use of forceful means against a Mandatory. The Mandates Commission is always on the lookout and can be depended upon to call to the attention of the Council instances in which the Mandatory has failed to act towards its mandated territory as it should. The Council can then bring to the attention of the Mandatory the opinion of the Mandates Commission, and by that time public opinion will be awake to such a degree that the mandatory Power will find itself compelled to heed the opinion of the Mandates Commission. Such was the case of the Bondelzwartz Affair.⁵⁵ Beyond this, neither the Mandates Commission nor the League of Nations have any means of bringing a Mandatory to order.

In conclusion, it may be said that there is hardly a possibility that a mandated territory will be transferred from one Power to another. As to this one can agree with Professor William Rappard, extraordinary member of the Permanent Mandates Com-

⁵⁵ See Report of the Permanent Mandates Commission on the Bondelzwarts Rebellion, League of Nations Doc. A47, 1923, VI, and the Comments of the Accredited representative of the Union of South Africa on same Report. *Ibid.*, A48, 1923, VI.

mission, who declares the likelihood of the withdrawal of a Mandate so remote, from a practical point of view, that it may be disregarded.⁵⁶ But, if such an event should occur, it could be consummated only by agreement between the Mandatory and the Council of the League, and with the implied assent of the Assembly of the League (which is the mouth-piece of the international public opinion) and of the United States, which has reserved for itself the right to have a voice in any change that may take place in the status of a mandated territory. It is thus not likely that in any of the above ways, the issue as to the location of sovereignty under the mandates system will be raised in such an acute manner that its definite decision will be compelled.

⁵⁶ Annex 4c to the Minutes of the 6th Session of the Permanent Mandates Commission. In the same way declared also Madame Bugge-Wicksell, the late member of the Commission, that "it is no doubt possible, in theory, for a mandate to be revoked, but, in practice, such an event appears not only improbable but inconceivable." *Ibid.*, Annex 4c.

CHAPTER X

SUMMARY AND CONCLUSION

In this concluding chapter an attempt will be made to summarize the various observations made in the earlier chapters, and to draw from them some final conclusions.

It is first to be noted that the mandates system of colonial government, as administered under the supervision of the League of Nations, is not an altogether novel system in colonial administration, nor is the method by which these backward races are being raised upon the ladder of civilization by the more advanced Western nations a newly created one. Thus Chief Justice Marshall, in the famous case of the Cherokee Nation *v.* Georgia, decided as long ago as 1830, described the Indians as “wards of the Nation” under the guardianship of the United States. The conscience of nations has long been aroused over their relations with the aborigines in Africa and elsewhere; and the often harsh and arbitrary treatment of the primitives has been justified by the avowal of such ideas as “sacred trust of civilization” and the “white man’s burden.” Long before the mandates system was established the imperialistic Powers vindicated their acquisition and rule of colonies on the assumption that they were primarily moved by the desire to extend to the dark

raises the light and benefits of civilization. So also, had the method of delegation of powers been adopted by the Concert of Powers in a variety of forms in times prior to 1914.

The mandates system is an improvement over earlier methods of indirect supervision, chiefly because it has behind it the greatest moral force in present day international relations, the League of Nations. Thus the Powers holding mandates over territories have always, in their administration of these territories, to consider international public opinion as voiced especially through the League of Nations.

Yet the mandates system was not adopted until fervent skirmishes had taken place between forces that stood at opposite sides of the question. The system, as finally accepted by the opposing forces, bears the stamp of compromise both as to its theoretical basis and as to its operative provisions. As a result of this compromise, which was intended to reconcile imperialistic ambitions with humanitarian sentiments, a check and balance system of government was established. This system exacts the utmost tact and care from every agency in mandatory administration. Especially difficult and trying is the position of a Mandatory which is expected to rule a territory without drawing to itself or to its nationals any preferential benefits. Thus, for example, when the language of a Mandatory is taught in the schools of a territory under its mandate, or when a Manda-

tory reduces the postal charges on letters and parcels between the mandated territory and itself, the Mandatory State opens itself to the charge that it has violated the spirit and terms of the mandate.

Yet, in spite of all the various forces that are at play in mandatory administration, and the similarity in the terms of all the mandates, the mandated territories of the several categories are not governed in one and the same fashion. In other words, the mandatory system does not prescribe rigid rules of administration which the Mandatories are expected to employ. What this system does require is that certain principles shall determine the policy of the administration, but that the carrying out of this policy shall be left in the hands of the respective Mandatories, to act in their own way and as they may think best.

The effect of the compromise is also seen in the field of legal interpretation. In the two preceding chapters have been discussed the various theories as to the situs of sovereignty in a mandated territory. The conclusion there reached was that at the time of the distribution of the mandates the situs of sovereignty was purposely left unsettled. Furthermore, all steps taken by the Council subsequent to the coming into force of the mandates system have been marked by the hardly concealed intent to avoid the settling of this issue. This uncertainty, it has been found, has been highly expedient, and is, in fact, essential to the working of the mandates system.

The fact that, during the ten years of its existence the system has overcome all obstacles in its way, and has succeeded in advancing along the road laid out for it, shows again that, in some spheres at least, international opinion is of weight. The concepts of sovereignty and independence, which have been, and still are, at the basis of international relations between the modern States, lose much of their importance in mandated territories, with the fate of which international public opinion is greatly concerned.

Yet, the mandates system is not without its weak points. The greatest flaw in the working of the system is the fact that the Permanent Mandates Commission, in whose hands lies the responsibility of supervision, is greatly limited in its powers. Thus the Commission has no means of verifying a report. The privilege of giving occasional hearings to petitioners, for which it has asked, has been denied to it. The experience with the Mandates Commission, lasting as it has over a period of ten years, should have taught the Mandatory Powers that, if the Commission were given the right to hear petitioners, or even, in exceptional cases, to visit a mandated territory, these privileges would probably not be abused. In the end it would be found that a stronger Commission would be better for the Mandatory Powers, due to the fact that the Commission has taken unto itself the task, not of criticism, but of cooperation. Hence, the more powers the Commission is given

the greater will be its usefulness in the common undertaking of extending civilization and its benefits to the uncivilized races of the world.

What will be the future of the mandated territories? Knowing the complicated machinery of mandatory administration, one is safe in prophesying that, except where a mandated territory has reached that stage in development where it can enter the League of Nations upon equal footing with the other Members, no change, loss, transfer or annexation of any territory in any category will take place, at least for some time to come.

Will the mandates system be extended to new areas? At its Sixth session, the Mandates Commission discussed the possibility of the extension of the mandates system to other colonial possessions of the Western Powers. It is highly doubtful whether colonial Powers will agree to submit their actions in their colonies to the scrutiny of the Mandates Commission. In any case, however, the administration of the mandated territories is bound to influence the administration of other colonies, and the duties of trusteeship and tutelage, implicit in that system, will more and more tend to furnish the guiding principles for all the Powers who have the fates of backward peoples in their hands.

APPENDIX I

ARTICLE 22 OF THE COVENANT OF THE LEAGUE OF NATIONS

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such people for a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of develop-

ment where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centers of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above-mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall if not previously agreed upon by the Members of the League be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

APPENDIX II

THREE TYPICAL MANDATES

A "C" MANDATE

MANDATE FOR GERMAN SAMOA

THE COUNCIL OF THE LEAGUE OF NATIONS

Whereas by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28th, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her overseas possessions, including therein German Samoa; and

Whereas the Principal Allied and Associated Powers agreed that, in accordance with Article 22, Part I (Covenant of the League of Nations) of the said Treaty, a Mandate should be conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Dominion of New Zealand to administer German Samoa and have proposed that the mandate should be formulated in the following terms; and

Whereas His Britannic Majesty, for and on behalf of the Government of the Dominion of New Zealand, has agreed to accept the Mandate in respect of the said territory and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions; and

Whereas, by the afore-mentioned Article 22, paragraph 8, it is provided that the degree of authority, control or administration to be exercised by the Mandatory not having been previously agreed upon by the Member of the League, shall be explicitly defined by the Council of the League of Nations;

Confirming the said Mandate, defined its terms as follows:

ARTICLE 1

The territory over which a Mandate is conferred upon His Britannic Majesty for and on behalf of the Government of the Dominion of New Zealand (hereinafter called the Mandatory) is the former German Colony of Samoa.

ARTICLE 2

The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Dominion of New Zealand, and may apply the laws of the Dominion of New Zealand to the territory, subject to such local modifications as circumstances may require.

The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present Mandate.

ARTICLE 3

The Mandatory shall see that the slave trade is prohibited and that no forced labour is permitted, except for essential public works and services, and then only for adequate remuneration.

The Mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the Convention relating to the control of the arms traffic, signed on September 10th, 1919, or in any convention amending the same.

The supply of intoxicating spirits and beverages to the natives shall be prohibited.

ARTICLE 4

The military training of the natives, otherwise than for the purposes of internal police and the local defence of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory.

ARTICLE 5

Subject to the provisions of any local law for the maintenance of public order and public morals, the Mandatory shall ensure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any State Member of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling.

ARTICLE 6

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under Articles 2, 3, 4 and 5.

ARTICLE 7

The consent of the Council of the League of Nations is required for any modification of the terms of the present Mandate.

The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

The present Declaration shall be deposited in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Powers Signatories of the Treaty of Peace with Germany.

Made at Geneva, the 17th day of December, 1920.

A "B" MANDATE

BRITISH MANDATE FOR TOGOLAND¹

ARTICLE 1

The territory for which a mandate is conferred upon His Britannic Majesty comprises that part of Togoland which lies to the west of the line laid down in the Declaration signed on July 10th, 1919, of which a copy is annexed hereto.

This line may, however, be slightly modified by mutual agreement between His Britannic Majesty's Government and the Government of the French Republic where an examination of the localities shows that it is undesirable, either in the interests of the inhabitants or by reason of any inaccuracies in the map Sprigade 1: 200,000, annexed to the Declaration, to adhere strictly to the line laid down therein.

The delimitation on the sport of this line shall be carried out in accordance with the provisions of the said Declaration.

¹ The Preambles, with minor changes, are almost the same in all the Mandates, except for the Mandate for Palestine, which contains these two additional clauses:

"Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country; and

"Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country; . . ."

The final report of the Mixed Commission shall give the exact description of the boundary line as traced on the spot; maps signed by the Commissioners shall be annexed to the report. This report with its annexes shall be drawn up in triplicate; one of these shall be deposited in the archives of the League of Nations, one shall be kept by His Britannic Majesty's Government, and one by the Government of the French Republic.

ARTICLE 2

The Mandatory shall be responsible for the peace, order and good government of the territory, and for the promotion to the utmost of the material and moral well-being and the social progress of its inhabitants.

ARTICLE 3

The Mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications, nor organize any native military force except for local police purposes and for the defence of the territory.

ARTICLE 4

The Mandatory:

- (1) shall provide for the eventual emancipation of all slaves, and for as speedy an elimination of domestic and other slavery as social conditions will allow;
- (2) shall suppress all forms of slave trade;

(3) shall prohibit all forms of forced or compulsory labour, except for essential public works and services, and then only in return for adequate remuneration;

(4) shall protect the natives from abuse and measures of fraud and force by the careful supervisions of labour contracts and the recruiting of labour;

(5) shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors.

ARTICLE 5

In the framing of laws relating to the holding or transfer of land, the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population.

No native land may be transferred, except between natives, without the previous consent of the public authorities, and no real rights over native land in favour of non-natives may be created except with the same consent.

The Mandatory shall promulgate strict regulations against usury.

ARTICLE 6

The Mandatory shall secure to all nationals of States Members of the League of Nations the same rights as are enjoyed in the territory by his own nationals in respect of entry into and residence in the territory, the protection afforded to their person

and property, and acquisition of property, moveable and immoveable, and the exercise of their profession or trade, subject only to the requirements of public order, and on condition of compliance with the local law.

Further, the Mandatory shall ensure to all nationals of States Members of the League of Nations, on the same footing as to his own nationals, freedom of transit and navigation, and complete economic, commercial and industrial equality; except that the Mandatory shall be free to organize essential public works and services on such terms and conditions as he thinks just.

Concessions for the development of the natural resources of the territory shall be granted by the Mandatory without distinction on grounds of nationality between the nationals of all States Members of the League of Nations, but on such conditions as will maintain intact the authority of the local Government.

Concessions having the character of a general monopoly shall not be granted. This provision does not affect the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory under mandate and in order to provide the territory with fiscal resources which seem best suited to the local requirements; or, in certain cases, to carry out the development of natural resources, either directly by the State or by a controlled agency, provided that there shall result therefrom no mo-

nopoly of the natural resources for the benefit of the Mandatory or his nationals, directly or indirectly, nor any preferential advantage which shall be inconsistent with the economic, commercial and industrial equality hereinbefore guaranteed.

The rights conferred by this article extend equally to companies and associations organized in accordance with the law of any of the Members of the League of Nations, subject only to the requirements of public order, and on condition of compliance with the local law.

ARTICLE 7

The Mandatory shall ensure in the territory complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality; missionaries who are nationals of States Members of the League of Nations shall be free to enter the territory and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the territory; it being understood, however, that the Mandatory shall have the right to exercise such control as may be necessary for the maintenance of public order and good government, and to take all measures required for such control.

ARTICLE 8

The Mandatory shall apply to the territory any general international conventions applicable to its contiguous territory.

ARTICLE 9

The Mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the Mandatory as an integral part of its territory and subject to the above provisions.

The Mandatory shall therefore be at liberty to apply its laws to the territory subject to the mandate with such modifications as may be required by local conditions, and to constitute the territory into a customs, fiscal or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of this mandate.

ARTICLE 10

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information concerning the measures taken to apply the provisions of this mandate.

ARTICLE 11

The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

ARTICLE 12

The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

The present instrument shall be deposited in original in the archives of the League of Nations. Certified Copies shall be forwarded by the Secretary-General of the League of Nations to all Members of the League.

AN "A" MANDATE

MANDATE FOR SYRIA AND THE LEBANON

ARTICLE 1

The Mandatory shall frame, within a period of three years from the coming into force of this mandate, an organic law for Syria and the Lebanon.

This organic law shall be framed in agreement with the native authorities and shall take into account the rights, interests, and wishes of all the population inhabiting the said territory. The Mandatory shall further enact measures to facilitate the progressive developments of Syria and the Lebanon as independent States. Pending the coming into effect of the organic law, the government of Syria and

the Lebanon shall be conducted in accordance with the spirit of this mandate.

The Mandatory shall, as far as circumstances permit, encourage local autonomy.

ARTICLE 2

The Mandatory may maintain its troops in the said territory for its defence. It shall further be empowered, until the entry into force of the organic law and the reestablishment of public security, to organise such local militia as may be necessary for the defence of the territory, and to employ this militia for defence and also for the maintenance of order. These local forces may only be recruited from the inhabitants of the said territory.

The said militia shall thereafter be under the local authorities, subject to the authority and the control which the Mandatory shall retain over these forces. It shall not be used for purposes other than those above specified save with the consent of the Mandatory.

Nothing shall preclude Syria and the Lebanon from contributing to the cost of the maintenance of the forces of the Mandatory stationed in the territory.

The Mandatory shall at all times possess the right to make use of the ports, railways and means of communication of Syria and the Lebanon for the passage of its troops and of all materials, supplies and fuel.

ARTICLE 3

The Mandatory shall be entrusted with the exclusive control of the foreign relations of Syria and the Lebanon and with the right to issue exequaturs to the consuls appointed by foreign Powers. Nationals of Syria and the Lebanon living outside the limits of the territory shall be under the diplomatic and consular protection of the Mandatory.

ARTICLE 4

The Mandatory shall be responsible for seeing that no part of the territory of Syria and the Lebanon is ceded or leased or in any way placed under the control of a foreign Power.

ARTICLE 5

The privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by Capitulation or usage in the Ottoman Empire, shall not be applicable in Syria and the Lebanon. Foreign consular tribunals shall, however, continue to perform their duties until the coming into force of the new legal organisation provided for in Article 6.

Unless the Powers whose nationals enjoyed the afore-mentioned privileges and immunities on August 1st, 1914, shall have previously renounced the right to their re-establishment, or shall have agreed to their non-application during a specified period, these privileges and immunities shall at the expira-

tion of the mandate be immediately re-established in their entirety or with such modifications as may have been agreed upon between the Powers concerned.

ARTICLE 6

The Mandatory shall establish in Syria and the Lebanon a judicial system which shall assure to natives as well as to foreigners a complete guarantee of their rights.

Respect for the personal status of the various peoples and for their religious interest shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in complete accordance with religious law and the dispositions of the founders.

ARTICLE 7

Pending the conclusion of special extradition agreements, the extradition treaties at present in force between Foreign Powers and the Mandatory shall apply within the territory of Syria and the Lebanon.

ARTICLE 8

The Mandatory shall ensure to all complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality. No discrimination of any kind shall be made between the inhabitants of Syria and the Lebanon on the ground of differences in race, religion or language.

The Mandatory shall encourage public instruction, which shall be given through the medium of the native languages in use in the territory of Syria and the Lebanon.

The right of each community to maintain its own schools for the instruction and education of its own members in its own language, while conforming to such educational requirements of a general nature as the administration may impose, shall not be denied or impaired.

ARTICLE 9

The Mandatory shall refrain from all interference in the administration of the Councils of management (*Conseils de fabrique*) or in the management of religious communities and sacred shrines belonging to the various religions, the immunity of which has been expressly guaranteed.

ARTICLE 10

The supervision exercised by the Mandatory over the religious missions in Syria and the Lebanon shall be limited to the maintenance of public order and good government; the activities of these religious missions shall in no way be restricted, nor shall their members be subjected to any restrictive measures on the ground of nationality, provided that their activities are confined to the domain of religion.

The religious missions may also concern themselves with education and relief, subject to the gen-

eral right of regulation and control by the Mandatory or of the local government, in regard to education, public instruction and charitable relief.

ARTICLE 11

The Mandatory shall see that there is no discrimination in Syria or the Lebanon against the nationals, including societies and associations, of any State Member of the League of Nations as compared with its own nationals, including societies and associations, or with the nationals of any other foreign State in matters concerning taxation or commerce, the exercise of professions or industries, or navigation, or in the treatment of ships or aircraft. Similarly, there shall be no discrimination in Syria or the Lebanon against goods originating in or destined for any of the said States; there shall be freedom of transit, under equitable conditions, across the said territory.

Subject to the above, the Mandatory may impose or cause to be imposed by the local governments such taxes and customs duties as it may consider necessary. The Mandatory, or the local governments acting under its advice, may also conclude on grounds of contiguity any special customs arrangements with an adjoining country.

The Mandatory may take or cause to be taken, subject to the provisions of paragraph 1 of this article, such steps as it may think best to ensure the development of the natural resources of the said territory and to safeguard the interests of the local population.

Concessions for the development of these natural resources shall be granted without distinction of nationality between the nationals of all States Members of the League of Nations, but on condition that they do not infringe upon the authority of the local government. Concessions in the nature of a general monopoly shall not be granted. This clause shall in no way limit the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory of Syria and the Lebanon, and with a view to assuring to the territory the fiscal resources which would appear best adapted to the local needs, or, in certain cases, with a view to developing the natural resources either directly by the State or through an organisation under its control, provided that this does not involve either directly or indirectly the creation of a monopoly of the natural resources in favour of the Mandatory or its nationals, nor involve any preferential treatment which would be incompatible with the economic, commercial and industrial equality guaranteed above.

ARTICLE 12

The Mandatory shall adhere, on behalf of Syria and the Lebanon, to any general international agreements already existing, or which may be concluded hereafter with the approval of the League of Nations, in respect to the following: the slave trade, the traffic in drugs, the traffic in arms and ammunition, commercial equality, freedom of transit and naviga-

tion, aerial navigation, postal, telegraphic or wireless communications, and measures for the protection of literature, art or industries.

ARTICLE 13

The Mandatory shall secure the adhesion of Syria and the Lebanon, so far as social, religious and other conditions permit, to such measures of common utility as may be adopted by the League of Nations for preventing and combating disease, including diseases of animals and plants.

ARTICLE 14

The Mandatory shall draw up and put into force within twelve months from this date a law of antiquities in conformity with the following provisions. This law shall ensure equality of treatment in the matter of excavation and archaeological research to the nationals of all States Members of the League of Nations.¹

ARTICLE 15

Upon the coming into force of the organic law referred to in Article 1, an arrangement shall be made between the Mandatory and the local governments for reimbursement by the latter of all expenses incurred by the Mandatory in organising the adminis-

¹ This article contains eight additional clauses which go into great detail with regards to the treatment of antiquities and excavations.

tration, developing local resources, and carrying out permanent public works, of which the country retains the benefit. Such arrangement shall be communicated to the Council of the League of Nations.

ARTICLE 16

French and Arabic shall be the official languages of Syria and the Lebanon.

ARTICLE 17

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council as to the measures taken during the year to carry out the provisions of this mandate. Copies of all laws and regulations promulgated during the year shall be attached to the said report.

ARTICLE 18

The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

ARTICLE 19

On the termination of the mandate, the Council of the League of Nations shall use its influence to safeguard for the future the fulfilment by the Government of Syria and the Lebanon of the financial obligations, including pensions and allowances, regularly assumed by the administration of Syria or of the Lebanon during the period of the mandate.

ARTICLE 20

The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

The present instrument shall be deposited in original in the archives of the League of Nations and certified copies shall be forwarded by the Secretary-General of the League of Nations to all Members of the League.

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